

# **New Jersey's Open Space Preservation Programs: A Review of County Grants Under the Farmland Preservation Program**

## **APPENDIX II**

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A Program Review for Attorney General John J. Farmer, Jr.  
by  
The Office of the Inspector General

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Edward M. Neafsey, ADAG  
Inspector General

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**PART I:**  
**INDIVIDUALS INTERVIEWED BY OIG STAFF**

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Dennis Davidson, Deputy Administrator, Department of Environmental Protection

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William DiMeo, Jr., Atlantic CADB

David Donaldson, farmer

Lewis Donaldson, Warren CADB

Wally Eachus, Gloucester CADB

Ronald Emley, Ocean CADB

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Roger Harris, Hunterdon CADB

James Hazlett, Cape May CADB

Patricia Hilton, Hunterdon CADB

William Hlubik, Middlesex CADB

Robert Hoffman, Jr., Hunterdon CADB

Casey Hunter, Ocean CADB

Chris G. James, Bergen CADB

Thomas Jarvis, Camden CADB

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Harold Johnson, Cumberland County Freeholder

Theodore Kiefer, Cumberland CADB

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Robert Klotz

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Donald Longstreet

Russell Marino, Gloucester CADB

William McCormack, Monmouth CADB

Peggy McNeil, Mercer CADB

Les Miller, Camden CADB

Robert R. Minutole, Director, Division of Planning, Lawrence Township

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Charlotte Pattison, Sussex CADB

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Orrie Terpstra, Warren CADB

William Turnbull, Somerset CADB

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Mark C. Vodak, Ocean CADB

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## **PART II:**

### **REVIEW OF PARTICULAR EASEMENT PURCHASES**

In this portion of the Appendix to its Report, OIG details selected easement purchases made by the Farmland Preservation Program. In the first section, OIG reviews sales of easements to the program by members of County Agriculture Development Boards. OIG found no case in which a CADB member voted on his own application or that of a family member. OIG did, however, find one easement sale in which a board member appears to have interjected his own interests in a land sale between the SADC and a third party. The action by the board member appeared to have provided certain benefits to him personally, while simultaneously resulting in a financial cost to the board on which he served. OIG also found that recusal requirements in some counties were less than strictly enforced and, in those counties, board members applying to the program would often remain in the audience while their application was discussed and would be available to answer questions about their property. Finally, OIG found one transaction in which a board member improperly voted on an application to sell an easement on land which he had rented and farmed for many years.

In the second section, OIG reviews some of the more expensive easement sales undertaken in the counties and attempts to discern some of the reasons for the high cost.<sup>1</sup> In one of these sales, only a year after purchasing a six acre tract in fee simple for \$80,000, the new owner applied to the Farmland Preservation Program and the county purchased a development

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<sup>1</sup> In recognition that real estate prices vary widely between the counties, OIG focused on the higher prices paid in each county relative to other easement sales in that same county. In order that the size of the acreage on which an easement was being imposed did not become the only deciding factor, OIG compared per acre prices paid, rather than total easement cost.



easement on the same tract for approximately \$106,000. In several instances, the file reveals that the State review appraiser seemed to feel some constraint to accept the county level appraisals although disagreeing with their analysis or conclusions.

In Section III, OIG reviews other selected easement sales, including those which have been the focus of some public criticism, and undertakes to evaluate whether the criticism has a valid basis. In that same section, OIG also reviews, *inter alia*, several easement sales by business entities and identifies cases in which developers sold easements to the program. OIG did not find any case in which a board member's ownership of a business entity appeared to be intended to conceal his identity.

In undertaking its review of specific easement sales, OIG first reviewed an SADC listing of all easements purchases on which closings had occurred by October 2000. Many of the farms approved for funding during the 1999 funding round, however, and most of the farms approved for funding during the 2000 and 2001 funding rounds, had not yet proceeded to closing on the easement purchases by October 2000. Accordingly, and unless otherwise indicated, when OIG refers to the average easement purchase price per county, the calculation is based only on those purchases which had been finalized through a closing on the easement sale taking place by October 2000. OIG also reviewed SADC listings of farms approved for funding since the 1999 funding round, including those for which easement sales are not yet finalized. When farms are being discussed hereinafter on which closings had occurred at the time of review, that fact is noted. Review of the approved funding for these more current easement purchase rounds, although the sales are not yet closed, is important in revealing purchase trends in the various counties.

## **Section I: CADB Members with Preserved Farms<sup>2</sup>**

### **Burlington County - Pettit Farms**

William Pettit, Sr., has been member of the Burlington CADB for over 20 years. Both Pettit and his son, William Pettit, Jr., have preserved their farms through the easement purchase program. In 1990, Pettit, Sr., received \$5,619<sup>3</sup> per acre when his 141 acre Springfield Township dairy farm was preserved. In 1992, Pettit, Jr., received \$4,719 per acre for the development rights to his 337 acre Southampton/Lumberton farm, while, through October 2000, the average Burlington per acre easement purchase price paid was \$4,332.<sup>4</sup> Pettit, Sr., recused himself and vacated the room during the board's discussion of both his own application to the program and that of his son. It is noteworthy that Pettit was also a member of the State Agriculture Development Committee in 1989 when his own farm was voted on by that body. SADC records reflect that Pettit was not present during either the discussion or vote on his own farm.

The SADC certified a value of \$5,700 per acre for the easement on the Pettit Sr. farm and the payment received represented a discount by Pettit from that value. The parcel contained 75% prime soils of which 70% was tillable cropland. It was located in an area of preservation priority

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<sup>2</sup> Discussion is organized alphabetically within counties.

<sup>3</sup> Both acreage amounts and price per acre have been rounded to the nearest whole number throughout OIG's Report and this Appendix.

<sup>4</sup> It is noteworthy that the average per acre easement cost in Burlington County for closings completed to date in fiscal year 2001 is \$11,496. This dramatic increase is largely accounted for by the easement purchase on the Stokelan Farm in Medford Township at a per acre cost of \$19,815. This purchase, driven by a *Mount Laurel* builder's remedy lawsuit, is reviewed in OIG's Report.

in Burlington County. There was one residual dwelling site opportunity but no exceptions to the easement sale.

The Pettit Jr. dairy farm had good quality soil, 88% prime and only 10% with severe septic limitations, although another 51% had moderate septic limitations. The property contained a notable percentage of wetlands (32%). The farm also had extensive usable frontage. A recently constructed residential subdivision was located across the street from the farm. A sewer plant abutted the eastern edge of the property, thus indicating that the property's septic limitations may not affect its development. The State review appraiser found the market value of the land to be \$8,000 per acre, its agricultural use value to be \$2,800 per acre and its resulting easement value to be \$5,200 per acre.<sup>5</sup> Thus, Pettit Jr. also accepted less than the State certified value for the development easement to his farm.

#### **Burlington County - Robson Land, Inc.**

Neil D. Robson has been a member of the Burlington CADB since 1990. He applied through Robson Land, Inc.,<sup>6</sup> to the Farmland Preservation Program for both his North Hanover property and his Chesterfield property. Robson abstained from voting on both applications and was not present during any of the discussion concerning those properties. The development easement on his 144 acre Chesterfield property was sold directly to Burlington County in January 1998 for \$617,790. The county then applied to the SADC for reimbursement of the county

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<sup>5</sup> It is notable that the county-level appraisers provided rather divergent estimates of easement values – one at \$2,889 per acre and the other at \$5,200 per acre. The State reviewer, who made a field inspection of the property, certified the higher value based on the soil quality and frontage of the tract.

<sup>6</sup> Robson Land, Inc., is a closely held corporation owned by Neil Robson and his parents.

expenditure. The State reimbursed the county approximately \$403,043 for the easement purchase.

The 146 acre North Hanover property was included in the 1995 funding round. It was a crop and vegetable farm with 43% prime soils and a small (10%) amount of wetlands. The property was comprised of 59% tillable cropland, 6% orchard, 5.5% nursery, 19% woodland and 10.5% other (pond and buildings, including 14 greenhouses). The two county-level appraisers estimated the market value at \$5,800 and \$6,500 per acre, the value restricted to agriculture as \$2,600 and \$2,000, respectively, and the resulting easement value at \$3,200 and \$4,500 per acre. The State review appraiser found the market value to be \$6,500, the agricultural value to be \$2,600, and certified the easement value at \$3,900 per acre.<sup>7</sup> Closing occurred on April 16, 1997. Robson discounted the certified value. The easement price actually paid was \$3,501 per acre, which is below the county average. This property was number 35 in the SADC final ranking during the 1995 easement purchase round.<sup>8</sup>

Robson's second application was for a 144 acre crop farm located in Chesterfield Township.<sup>9</sup> The property had favorable frontage ratios, soil conditions and topography. It had

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<sup>7</sup> There were five farms preserved in Burlington County during the 1995 funding round. The certified easement prices varied from a low of \$2,800 per acre for the Winding Lane, Inc., property in North Hanover/Chesterfield to a high of \$4,100 per acre for the Rahilly Farm in Springfield Township.

<sup>8</sup> When a landowner offers to accept a discount from the certified easement value, his land receives a higher final SADC purchase priority ranking in proportion to the percentage discount.

<sup>9</sup> Block 1002, lot 5.01.

almost 15% wetlands<sup>10</sup> and 10% woodlands cover. The area in which the property was located was a residential/agricultural mix with three acre zoning.

Robson had purchased the Chesterfield Township property on June 6, 1997, from Don and Diane Longstreet. In January 1998, he received payment directly from the county for a development easement on the property -- far sooner than the usual length of time between application and receipt of funds. This occurred because Robson managed to obtain the benefit of an easement purchase offer made to the previous owner of the farm in 1996.

The Longstreets had first applied in the 1996 funding round to sell an easement on the property, but because an adequate municipal contribution was unavailable, did not succeed. On the recommendation of Burlington CADB staff, and because Longstreet was actually interested in selling the property entirely, Longstreet applied to sell his farm in fee simple<sup>11</sup> to the SADC.<sup>12</sup>

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<sup>10</sup> This same property was submitted to the SADC's easement purchase program during the 1996 funding round. Because of insufficient funding, it was not selected for an easement purchase. In evaluating the 1996 application, the State review appraiser noted that the property contained less than 10% wetlands. The application in 1998 indicated that the same property had almost 15% wetlands.

<sup>11</sup> A "fee simple" purchase is a purchase of the owner's entire ownership interest in a property. This is to be distinguished from a development easement sale, where the owner retains ownership of the land with all the attendant rights of ownership except that he agrees not to develop the land further.

<sup>12</sup> Of the six Burlington County easement purchase applicants in the 1996 funding round, only two were approved for easement purchases by the SADC. Longstreet's farm was not approved. Burlington County offered to directly purchase development easements on each of the four farms not approved by the SADC in order to keep the momentum of the county program going. Thus, in 1996, before the staff to the CADB recommended that Longstreet seek to sell his farm in fee simple to the SADC, the Burlington County Board of Chosen Freeholders approved a direct easement purchase on Longstreet's farm.

In July 1996, the SADC approved the fee simple purchase of Longstreet's farm, at a price of \$1 million. The chairman of the Burlington CADB was advised by an SADC letter in July 1996 of the pending fee simple purchase of the Longstreet tract. The SADC reports that, in August 1996, Longstreet accepted the SADC's offer to purchase his farm. A closing on the fee simple sale was anticipated in July or August 1997. According to Longstreet, however, subsequent to the SADC's offer, Neil Robson approached him to discuss purchasing Longstreet's farm.<sup>13</sup>

Closing on the sale of a development easement on Robson's North Hanover farm from the 1995 funding round was imminent and, to avoid capital gains taxes, Robson sought a "like kind exchange," that is, a purchase of a development easement on another property in the same tax year in which he received income from the sale of a development easement on his own property. Longstreet and Robson met on New Year's Day 1997 to discuss the details of Robson's buying Longstreet's farm. Longstreet assumed, because Robson was a member of the Burlington CADB, that Robson was aware of the \$1 million offer to buy the farm from the SADC, and Longstreet did not seek a higher price.

In February 1997, before closing on the sale to the SADC, Longstreet withdrew his offer to sell his Chesterfield property to the State, after receiving a deposit from Robson, stating that

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<sup>13</sup> Although Longstreet related to OIG staff that Robson first approached him to discuss purchasing the farm, when interviewed by OIG staff, Robson stated that Longstreet initiated the contact. It is, however, unclear why Longstreet, who already had an offer from the SADC to buy his farm, would have sought out Robson for that same purpose. On the other hand, Robson had a financial motivation to seek to buy a development easement on Longstreet's farm, that is, to reduce his own capital gains taxes resulting from the 1997 closing on the sale of a development easement on his North Hanover property.

he would be selling the farm to Robson. According to SADC records, on February 4, 1997, in explaining his reason for withdrawing his verbal agreement to sell his land to the SADC, Don Longstreet related that the Burlington CADB had been negotiating with Robson to purchase the development rights to the Longstreets' farm because the CADB planned to become the "contract purchaser" of a development easement on the farm. Longstreet further stated that the Burlington CADB would send the application to the SADC for the next funding round.<sup>14</sup> If the SADC fee simple purchase had been finalized, the Longstreets' Chesterfield property would have been preserved as farmland, and at no cost to the county.

Burlington County files contain a letter dated in March 1997, purportedly from Longstreet, stating that the negotiations with the SADC had been unsuccessful, that Longstreet was now going to sell his farm to Robson and that Longstreet would like to accept the county's offer from mid-1996 to purchase an easement on his farm for \$4,300 per acre.<sup>15</sup> Because of this letter, Robson bootstrapped onto the county's previous offer to Longstreet, which meant that he probably received payment for the easement at least a year earlier than he otherwise would have.

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<sup>14</sup> The time for applications for the 1997 funding round had already passed by the time of Longstreet's call to the SADC. The farm was in fact submitted to the SADC by the Burlington CADB during the 1998 funding round.

<sup>15</sup> Longstreet has denied to OIG staff that he drafted this letter and expressed no prior knowledge of its contents when he was shown it by OIG staff. Indeed, he observed that it made no sense for him to write such a letter, since it incorrectly described his discussions with the SADC and he had no reason to seek to revive the county's earlier offer to buy an easement on property he was then under contract to sell to Robson. He stated, however, that the signature looked like his own.

Robson purchased the Longstreet property for a total price of \$1,020,000<sup>16</sup> in June 1997. Robson thereafter sold a development easement on the property to Burlington County on January 27, 1998, for \$617,790. In selling an easement on the farm to the county, Robson used the offer which had been made to Longstreet by Burlington County in 1996.

After directly purchasing a development easement from Robson on the former Longstreet farm, the county then submitted the property to the SADC for reimbursement of the easement cost. The State's share of the easement, which was paid to Burlington County in March 1999 for reimbursement of their expenditure, was \$403,043. Thus, Burlington County (and Chesterfield Township) paid about \$215,000 as a contribution toward the purchase of a development easement on the Longstreet farm when, if the sale by the Longstreets to the SADC fee simple program had been completed, the same land would have been preserved by the State as farmland at no cost to the county or municipality.

The two appraisals submitted to the SADC with the county's application for reimbursement of the easement purchase found the market value of the former Longstreet farm to be, respectively, \$6,700 and \$6,500 per acre.<sup>17</sup> The State review appraiser found the appraisals to

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<sup>16</sup> Robson paid \$20,000 more to Longstreet than the SADC had offered. The additional \$20,000 was for a building in which to store his farm equipment. The structure was on adjacent property owned by Longstreet and had not been part of the SADC deal. The Longstreets' ownership of the Chesterfield property was conveyed to Robson in two separate deeds. The first deed conveyed the property to Robson Land Inc. for approximately \$518,000, but the Longstreets retained a development easement on the property. The second deed conveyed the development easement to Robson for approximately \$502,000. The latter deed appears to have been conveyed in order to support Robson's need for a "like kind exchange." Both deeds were conveyed simultaneously from the Longstreets to Robson.

<sup>17</sup> The appraisals used in the Longstreet application were updated before being submitted by the county to support its application.



have understated the market value, and estimated the market value at \$6,800 per acre. The State review appraiser further found the value of the tract restricted to agriculture to be \$2,300 per acre, and the resulting easement value to be \$4,500 per acre. The county elected to discount the total easement price to \$4,009 per acre at the March 27, 1999, closing, of which the State's share was \$2,805 per acre. With the county's discount factored in, this easement purchase received a final ranking of 20 in purchase priority during the 1998 funding round, up from 26<sup>th</sup> in the initial quality ranking.

Robson also owns another preserved farm, which he purchased from Lowell J. Croshaw and his wife on October 7, 1997. The Crowshaws' April 20, 1995, application to the CADB documented Robson's tenant relationship to the property. Nevertheless, Robson did not recuse himself and participated in the vote on the Croshaw property.

This 184 acre farm<sup>18</sup> had been preserved less than four months earlier by Croshaw through the Farmland Preservation Program. At the easement sale closing on the property, on June 23, 1997, the Croshaws received \$571,011. Burlington County paid approximately \$154,725 of the easement purchase price on the Croshaw property. Robson purchased the preserved land, which included a single family frame house and several outbuildings in fair to poor condition, for \$650,000.<sup>19</sup> Approximately 15% of this farm was wetlands. It should be noted that all transactions involving this CADB member predated the creation of the GSPT.

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<sup>18</sup> Block 700, lot 5, North Hanover Township.

<sup>19</sup> An easement purchase price is not increased by existing improvements to a property because the easement only precludes additional construction and does not purchase existing structures. Combining the easement price paid by the program with the residual market value paid by Robson for the restricted property would yield a fee simple value of \$6,636 per acre for the 184 acre Croshaw Farm.

## **Cape May County - Bohm Farm**

In Cape May County, David Bohm has been a member of the CADB since its inception in the 1980s. Although his own 153 acre farm<sup>20</sup> was included in the 1994 funding round while he was a board member, Bohm neither voted nor participated in any discussions related to this property. As is the usual practice in Cape May County, an easement was first purchased on the property by the county, which thereafter submitted the property to the State program for reimbursement. The tract was included in the 1994 funding round.<sup>21</sup> The property was formerly part of Bohm's Sod Farm, operated with Lawrence Bohm, but, due to negative market conditions for sod, it was being used to grow wheat at the time of the application.

Approximately 44% of the soil was severe for septic absorption and another 53% was moderate for septic purposes. Thus, only about 3% of the property was readily suitable for development with septic systems. Almost a third of the property was marshlands. The county-level appraisers estimated the unrestricted market value of the property to be \$1,800 and \$2,014 per acre and its value restricted to agriculture to be \$650 and \$573 per acre, respectively. The State review appraiser certified the easement value at \$1,150 per acre. Closing on the sale of the easement to the State was completed in 1995. The following year, Bohm sold the land as a restricted farm for approximately \$687 per acre (\$105,000).

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<sup>20</sup> Block 4, lots 7 and 8, Dennis Township.

<sup>21</sup> There were three Cape May County farms preserved in the 1994 SADC funding round. Two belonged to Cape May CADB members (Bohm and Hazlett). Cape May County first purchased the easements on all of the county farms directly and then submitted them to the SADC for reimbursement. Because the county took a 20% discount from the certified easement value in the sale to the State, the Cape May County farms, which had initially ranked 35<sup>th</sup>, 49<sup>th</sup> and 54<sup>th</sup> in quality ranking, received rankings of 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> in the SADC final ranking of purchase priority.

The former Bohm farm is one of seven farms preserved in Dennis Township as of October 2000, and represents a lower per acre value received (by the county as contract purchaser of the easement) than that of four of those other farms and a greater value than two of those farms. The SADC computer records documented that Cape May County had preserved a total of 20 farms through October 2000. For 14 of those farms, the easement value on which the SADC cost-share reimbursement was based was higher than the value certified for Bohm's farm. Indeed, the average per acre easement price in Cape May County through October 2000 is \$2,651 – more than twice the easement value ascribed to Bohm's farm.

#### **Cape May County - Conover Farm**

The Conover Farm is a control farm, selected for comparison to easement purchases on CADB members' property, but is not owned by a Cape May CADB member. As is its ordinary procedure, Cape May County purchased the development rights of the Conover Farm in Middle Township directly from its owner and thereafter submitted it to the State program.

The Conover Farm was a 29 acre vegetable farm,<sup>22</sup> operated as the Conover Farm Market, in an area predominantly zoned for single family residential lots. The farm has 94% prime soils with some wetlands. Almost 80% of the land is harvested. It has 277 feet of frontage. It was ranked 81 out of 89 in the State farm quality comparison during the 1996 funding round. The farm's final SADC ranking, after the county discounted the sale price of the easement from the certified value, was tenth in purchase priority. The State review appraiser found the market value of the land to be \$5,000 per acre, the agricultural value to be \$1,000 per acre and the resulting

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<sup>22</sup> Block 472, lot 41.

value of a development easement to be \$4,000 per acre. The price was discounted to \$3,200 per acre by Cape May County.<sup>23</sup> The easement sale closed on June 15, 1998.

### **Cape May County - Hazlett Farm**

James Hazlett has been on the Cape May CADB for approximately ten years. The sale of his own farm's development rights through the State program was finalized on June 8, 1995, although the county had first purchased those rights and then applied to the State for reimbursement of the purchase. Hazlett noted to OIG staff that, when the county purchases the development rights on property, there is no guarantee that the State will reimburse the expenditure by accepting the property into the State program. Even when the State does purchase the development rights from the county, the county does not receive reimbursement for all of the money expended. Hazlett additionally noted that in Cape May, the CADB usually asks the property owner to attend meetings when their property is on the agenda in case questions arise.

The development rights to the 28 acre Hazlett Farm<sup>24</sup> in Middle Township were purchased for \$3,512 per acre, well above the county average of \$2,651 per acre. The purchase price, however, had been discounted by the county somewhat from the value certified by the

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<sup>23</sup> An owner may discount his offer to sell to a price less than the certified value. This will raise that farm in the State ranking. The owner may also decide to offer to sell at a price higher than the State certified value, as long as the price remains within the range of easement values set in the two county appraisals, although this will reduce the farm's purchase priority ranking. When funds to purchase farmland easements were limited and competition to enter the program high, a reduced ranking could bar entry into the program. When preservation funds are plentiful, on the other hand, more land owners may be able to sell easements at higher than the certified values.

<sup>24</sup> Block 5, lot 8.

State review appraiser of \$3,550 per acre. Although he was a member of the CADB during the vote on his own property, Hazlett neither voted nor participated in the discussion relating to his farm. He did, however, remain in the audience in order to be available to respond to any questions.

On the Hazlett Farm, 71% of the land was tillable cropland, 7% was pasture, 18% was woodland and the remaining 4% contained the farmhouse and barn. The farm produced hay and vegetables. The soil was of good quality, with 75% of it being prime soil and the remaining soil statewide quality. The parcel was reported to have no frontage, but to be within 270 feet of the highway.<sup>25</sup> The farm was initially ranked 56 out of the 61 farms funded during the 1994 round, but, after consideration of the county's discount from the certified easement value, the final SADC ranking was fourth in purchase priority.

#### **Cape May County - Leslie C. Rea Farms, Inc.**

Leslie Rea is a member of the Cape May CADB. On July 13, 2000, Rea sold a development easement on part of his farm to Cape May County. Cape May County paid Rea \$26,500 per acre for the easement on this 13.7 acre parcel. This is the highest easement price in Cape May County to date.<sup>26</sup> Rea also sold a development easement on another portion of his farm to Cape May County at a price of approximately \$12,300 per acre. Both easement sales

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<sup>25</sup> A complete lack of road frontage would ordinarily be a significant impediment to development since the use of an access easement cannot generally be expanded to accommodate additional uses, such as access for those in a subdivision.

<sup>26</sup> In the 1999 and 2000A funding rounds, the SADC certified easement values of \$23,000 and \$17,100 per acre on two Cape May County submissions. See Section II of this Appendix for discussion of the easement purchase on these two six-acre tracts, both belonging to William H. and Joan Hayes, who operate the Cape May Winery and Vineyard.

have been combined in Cape May County's pending application to the SADC for reimbursement of the easement purchase prices paid to Rea.<sup>27</sup>

OIG is advised that reimbursement of the easement purchases to Cape May County is currently under consideration by the SADC. OIG was further informed that the SADC is evaluating whether the new regulations, which prohibit board members from submitting their own property to the program, apply to a situation where a county submits a board member's land to the SADC for reimbursement.<sup>28</sup> When his farm was being considered by the County Agriculture Development Board, Rea sat in the audience and answered questions about the farm. He thereafter resumed his seat on the board and participated in other board business.

Regarding Cape May's procedure of buying a development easement on the land and then submitting the farm to the State program for reimbursement, Rea explained that this procedure assures that a farmer will not need to accept a discount on the certified value of the easement in order to enter at least the county program. Thus, the CADB determines the value to be paid for the easement and then submits the farm to the State program for reimbursement, with the county undertaking the risk that the State program will not accept the farm into the program or that the subsequently certified value will be less than the county paid the owner. Rea also noted that a

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<sup>27</sup> According to Rea, his proposal to sell an easement on his farm had been somewhat rushed through the CADB because a foreclosure was imminent. Rea, who is 65, advised OIG that although he used to farm 1,000 acres, he now owns approximately 100 and farms 85. He stated that the farm's product is now sold only at his farmstand. He observed that, "There's not a good living in farming... The hours are too long and there's too little pay."

<sup>28</sup> The SADC has requested legal advice from the Division of Law regarding whether the county's submission as contract purchaser of a development easement on the Rea property violates the new regulations. The SADC has not yet received a response to its request for legal advice but has proceeded to determine the fair market value of the development easement on the property in the interim.

closing proceeds more quickly on direct easement purchases than on an application made through the CADB to the State program. Cape May County generally discounts from the certified easement value in order to move the county farms up on the SADC final ranking of purchase priority. Thus, the county uses its own “deeper pockets” to subsidize easement purchases for local farmers and to assure that Cape May County farms are selected for preservation by the SADC.

Rea received approximately \$12,300 per acre from the county for his 70 acres in West Cape May which front on Stevens Street.<sup>29</sup> The area is zoned rural residential or agriculture. An appraisal of the site observed that the property was not currently under any known pressure of residential development and Rea had not applied to develop the land. The appraiser further noted, however, that the County Planning Board had been requested to prepare a possible subdivision of the property on Rea’s behalf. The Planning Board sketched a development plan for 30 residential lots, which was provided to the appraisers.

According to the appraisals, approximately 58% of this tract is upland, including filled marshland, concentrated into three separate areas. An inactive New Jersey Transit railroad bed bisects the site. The property contains 18% filled marsh area and lowlands with 42% Pocomoke soils, which are severe for septic purposes.<sup>30</sup> The area is not served by public sewers, but is

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<sup>29</sup> Block 74, lot 3 and Block 73, lot 10 (Lower Township).

<sup>30</sup> The use of ordinary septic systems is prohibited with Pocomoke soil because the soil has seasonal high water table at the surface of the land. Such soils are identified with wetlands.

served by public water.<sup>31</sup> Sixty percent of the land is wetlands, and 40% uplands.<sup>32</sup> The property is located adjacent to the former Smith's Landfill, which existed prior to environmental regulation.<sup>33</sup> An appraiser noted that the former landfill could provide a stigma impacting on future development.

On July 13, 2000, the County of Cape May paid Rea \$864,192 (approximately \$12,300 per acre) for this 70 acre portion of his farm (Block 73, lot 10; Block 74, lot 3). One appraiser estimated that this property had an unrestricted market value of \$13,500 per acre, an agricultural value of \$1,200 per acre and a resulting development easement value of \$12,300. The second appraiser estimated the "before" value at \$19,622 per acre, the "after" value at \$2,133 per acre and the easement value at \$17,489 per acre. This latter appraisal had suggested that approximately nine acres of this tract could be developed, leaving the excess, "although it has no economic utility," to be used as "open space, recreation and birding."

The second section of Rea's farm submitted for easement purchase consisted of approximately 13.7 acres.<sup>34</sup> A deed of easement between Cape May County and Leslie C. Rea

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<sup>31</sup> As reported in appraisals of the property, public sewer under the county's 208 Water Quality Management Plan will service only land which fronts sewerable streets and is not characterized as wetlands or wetlands buffers. Thus, the rear tract, Block 74, lot 3, is not sewerable.

<sup>32</sup> As noted, 18% of the property is marshland which has been filled for agricultural purposes.

<sup>33</sup> In 1992, the DEP indicated this former landfill posed a potential threat to potable wells and presents environmental concerns of discharge and leachate. The appraiser observed, however, that, because the area has public water and public sewers would be required to develop the site, there is no known health hazard to development of the Rea property.

<sup>34</sup> Block 64, lots 1 to 4; Block 65, lots 1 to 4; Block 66, lot 1. One small portion of this land, Block 64, lot 3, was conveyed by the Borough of West Cape May to Leslie C. Rea Farms,



Farms, Inc., dated July 13, 2000, indicates that Rea received \$363,099 (approximately \$26,500

per acre) for imposing a development easement on this 13.7 acre tract. One appraiser indicated that only about 35% of this site was uplands, concentrated in the northwest area of the tract. The appraiser suggested that as many as 18 lots could be constructed in this area on approximately three acres, leaving over 10 acres, which had no economic utility to development, as open space.

Borough Resolution #147-95, dated October 3, 1995, noted that the State, County of Cape May and Borough of West Cape May had applied to the DEP to obtain a Coastal Area Facilities Review Act permit allowing the construction of a public sewer system to serve the west areas. The Resolution noted that its purpose was to comply with the DEP requirement that a resolution be adopted listing undeveloped properties within a wetlands, wetlands buffer and areas below 10 feet in elevation. In accordance with the DEP's requirement, all lots included in Rea's second easement sale were listed in Resolution #147-95. The resolution further stated that, for the listed lots, written authorization would be required before sewers could be installed.

The appraisals document that 43% of this second Rea tract is filled marshland, and another 19% is comprised of Pocomoke soil. Eight percent of the tract is comprised of prime soils, and 48% is comprised of unique soils. The entire tract is zoned rural residential or agricultural. Rea's February 3, 1999, application to sell an easement to the county documents that 55% of the tract is woodlands (7.5 acres), and 45% tillable cropland (6.2 acres).

One appraiser observed that the configuration of wetlands impacts developability and

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Inc., on September 28, 1999, for the sum of \$1,000. Notably, as vacant land, the value of this parcel was assessed by the Borough at \$25,000.

noted that the site area, wetlands and uplands varied greatly among the sales he had selected as comparables. He observed that all these elements must be analyzed collectively to determine the utility of the land. After noting that it was difficult to extract an adjustment for utility from value per acre, this appraiser determined to make *no* adjustments for site area, frontage, wetlands or uplands, although only 35% of the Rea property was uplands, and three of the six comparables this appraiser had selected were 100% uplands. The other three comparables were 55%, 60% and 75% uplands. This appraiser concluded that the unrestricted market value of the Rea property was \$39,416 per acre, its agricultural value was \$1,460 per acre and the value of a development easement on the property was therefore \$37,956 per acre. The second appraiser found the unrestricted market value to be \$23,700 per acre, the agricultural value to be \$1,300 per acre, and the value of a development easement on the property to be worth \$22,400 per acre.

#### **Cumberland County - Johnson Farms Enterprises**

Albert Johnson has been on the Cumberland CADB since its inception and serves as its chairman. Johnson Farms Enterprises is a corporation owned by Johnson and his family. Johnson Farms Enterprises has placed three properties into the preservation program. Each property is in Upper Deerfield Township, and they are comprised of 258 acres, 251 acres and 113 acres, for which Johnson Farms Enterprises received payments for the development easements of \$2,300, \$2,200 and \$2,300 per acre in, respectively, 1995, 1997 and 1998. Fifteen of the 36 farms preserved in Cumberland County through October 2000 are located in Upper Deerfield Township, and an additional farm is located in Deerfield/Upper Deerfield. The per acre value received by Johnson Farm Enterprises is mid-range for Upper Deerfield farms, although the county average through October 2000 is lower (\$1,809 per acre). Johnson did not participate in voting on any of

the land belonging to his family corporation. He did, however, participate in discussions regarding the land.

Johnson's first parcel was included in the 1994 funding round. The Upper Deerfield property is an excellent farm, consisting of 100% tillable cropland and comprised of 99% prime soils. The parcel was a large crop and sod farm with considerable frontage on two roads. The farm had no wetlands. The 258 acre farm was the CADB's top ranked farm and, during the 1994 funding round, was the top ranked farm out of 61 farms in the State quality ranking.<sup>35</sup> The farm slipped to fifth place in the final ranking due to discounted bids entered by other landowners. The State review appraiser found the market value to be \$3,350 per acre and the value restricted to agriculture to be \$1,050 per acre, and thus certified an easement value of \$2,300 per acre.

The second parcel put into the Farmland Preservation Program by Johnson was 75% tillable cropland and 25% nursery. This parcel, too, was 99% prime soils. During the 1995 funding round, the State review appraiser found the market value of the land to be \$3,200 per acre, the value restricted to agriculture to be \$1,000 per acre and the resulting easement value to be \$2,200 per acre. This 251 acre tract received a final SADC ranking of 11<sup>th</sup> in the State, despite the fact that Johnson did not offer a discount from the certified value.

The third Johnson farm was also found to be characterized by its exceptionally fine soils, which were 95% prime and 100% harvested. There were no residences then on the property, but a

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<sup>35</sup> The SADC initially ranks applications to the easement purchase program in terms of the desirability of the purchase, which includes such factors as the size and quality of the farm, the imminence of development and the local commitment to preserving farmland. *N.J.A.C. 2:76-6.16*.

one acre exception was made.<sup>36</sup> The farm was used as a crop farm, including vegetables.

Wetlands were non-existent and the soils had only slight or moderate septic limitations. The farm was located in an area of six acre zoning which was mostly farmland. The State review appraiser certified the easement value at \$2,300 per acre. This farm was initially ranked ninth in the State quality assessment, but fell to 40<sup>th</sup> in purchase priority in the final SADC ranking when other owners discounted their own offers to sell.

### **Cumberland County - Kiefer Farms**

Theodore Kiefer has been on the Cumberland CADB for less than a year. Kiefer owns two preserved farms, both located in Greenwich Township. Both were entered into the program before Kiefer became a CADB member. The first, a 188 acre field crop farm, was preserved in 1997 at a price of \$1,502 per acre. The land was comprised of 74% prime soils. About 25% of the property was wetlands. The farm was located on three of the four corners of the intersection of two county roads.<sup>37</sup> The SADC certified the development easement value at \$1,750 per acre. This farm was initially ranked 47<sup>th</sup> in the State in purchase priority during the 1996 easement funding round. The owner's discount moved the farm to 28<sup>th</sup> in the final ranking.<sup>38</sup>

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<sup>36</sup> An "exception" on an application to the Farmland Preservation Program is acreage on the tract to be preserved which is "excepted" from the easement sale. Thus, the program does not pay to purchase an easement on the excepted land and the owner may accordingly still construct non-agricultural buildings in the excepted area, such as a residence or a commercial building. The excepted area, although not subject to the development easement, generally remains a part of the preserved farm and, in a future sale, will be conveyed along with the acreage on which an easement has been placed.

<sup>37</sup> Block 13, lot 7; Block 15, lot 1; Block 16, lot 16.

<sup>38</sup> Easement purchases were only made on the top 42 farms in the 1996 SADC final ranking, due to lack of sufficient funds.

The second farm, 149 acres,<sup>39</sup> was preserved in 2000 at a cost of \$1,549 per acre. Keifer advised that he was not a member of the board during the vote on his property and stated that he had joined the board after July 2000 when the closing on his second farm occurred. This parcel, located in an area zoned 6 acre residential, was a field and nursery crop farm of which about

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<sup>39</sup> Block 18, lot 3.02, Greenwich Township.

two-thirds was harvested. The land was comprised of almost 80% prime soils. About 25% of the property, to the rear and sides, was wetlands. The easement value was certified at \$1,600 per acre by the SADC. This farm was initially ranked 36<sup>th</sup> in purchase priority, but fell to 59<sup>th</sup> in the final ranking when some other owners accepted discounts from the certified easement values.

Keifer also relates that he is an owner with six other family members of a farm in Gloucester County which recently made application to the program through the Gloucester CADB. He does not know anyone on the Gloucester CADB, but telephoned that board and spoke with a board member to inquire whether his membership on the Cumberland CADB posed a conflict. He was advised by the Gloucester board member that it did not.

#### **Gloucester County - Eachus Farm**

Although several Eachus Farms have entered the Farmland Preservation Program, only one entered through application to Gloucester CADB where Wally Eachus is a member. That 311 acre crop and dairy farm, owned by Eachus' mother and operated by him, was located in Elk, Harrison, Mantua and South Harrison Townships. The sale of the development easement was closed in 1999 and the farm was preserved at a cost of \$3,348 per acre.

The farm was comprised of two geographically distant farm tracts, some three miles from each other. The northeasterly tract, situated in Elk/South Harrison Townships, was a contiguous whole of 192 acres. The southeasterly tract was comprised of two, non-contiguous tracts, totaling 119 acres. About half of the 119 acre portion of the farm was located in an area of 3 acre residential/agricultural zoning, and the remainder in an area of one acre zoning. This latter part of the farm contained less than 10% wetlands. Almost 80% of the tract was comprised of prime

soils and 70% of the cropland was harvested. The SADC certified a development easement value of \$4,400 per acre for this 119 acre tract.

The 192 acre tract contained 70% prime soils, with about 21% of the land being wetlands. This property was located in an area of one acre zoning. The review appraiser certified an easement value of \$3,300 per acre for this portion of the Eachus farm.

James Yates, Director of the Gloucester County Farmlands Preservation Program was aware that Eachus had put his mother's land into the program in August 1999. Yates advised that Eachus did not participate in either the discussion or vote concerning his mother's land.

The Eachus family has also preserved farmland in other counties. In 1995, an 87 acre farm owned by Eachus' mother in Upper Deerfield Township, Cumberland County, was also preserved pursuant to the Agriculture Retention and Development Act. That farm, part of the 1994 funding round, contained 84% prime soils and 4% unique soils. Although the property was an operating dairy farm, approximately 93% of this farm was tillable cropland. An easement value of \$2,050 per acre was certified by the SADC and was not discounted by the owner.<sup>40</sup>

Finally, in the 1999 funding round, Eachus & Eachus Associates submitted a 157 acre farm, located in Pittsgrove/Upper Pittsgrove in Salem County to the program. This property is actually two crop farms, with two residences and two exceptions of 1.5 acres each for future residential use. The property has 94% prime soils and 83% of the land is harvested. Wetlands comprise approximately 5 to 10% of the property. Zoning is three acre residential and the

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<sup>40</sup> The State review appraiser found the market value of the land to be \$3,100 per acre and the value restricted to agriculture to be \$1,050 per acre.

neighborhood is rural. A large powerline easement severely restricts development on at least one of the parcels. The SADC review appraiser estimated the property to have a market value of \$2,550 per acre and an agricultural value of \$1,000 per acre. The SADC thus certified an easement value of \$1,550 per acre for this property. It should be noted that a portion of this property was purchased in July 1996 for \$2,083 per acre, net of improvements.

### **Gloucester County - Marino Brothers Partnership**

Russell Marino, a part owner of Marino Brothers Partnership, has been a member of the Gloucester CADB for approximately ten years and has served as its chairperson. In August 1999, he preserved the Marino Brothers' 177 acre farm in South Harrison.<sup>41</sup> The Marinos were paid \$3,484 per acre for the development rights to their farm, which reflected a discount from the \$3,750 easement value certified by the State.<sup>42</sup> The Marino property was ranked 12<sup>th</sup> in the 1998 SADC initial quality ranking.<sup>43</sup> After factoring in discounted bids by owners, the farm fell to 34<sup>th</sup> in final SADC purchase priority. Almost all owners which received higher final SADC rankings had made offers more substantially discounted from the certified value than had Marino.

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<sup>41</sup> Marino Brothers Partnership had purchased this land (Block 18, lot 5; Block 27, lot 1) in June 1994 for \$700,000 from Jayem Enterprises. Russell, Henry and Sebastian Marino independently own other farms in the same area. (Block 9, lots 4, 6 and 8; Block 17, lot 8 and Block 18, lot 1).

<sup>42</sup> This Marino property was previously considered in both the 1996 and 1997 funding rounds. The certified easement value of the property was \$3,000 per acre in the 1996 round and \$3,500 per acre in the 1997 round. In the 1996 round, the farm was 68<sup>th</sup> in final SADC ranking, but only the top 42 farms were funded. In the 1997 funding round, the farm was initially ranked 14<sup>th</sup> but fell to number 61 in the final ranking. Only the top 56 farms received funding in the 1997 round.

<sup>43</sup> Only two farms were preserved from Gloucester County during the 1998 funding round. Both belonged to Gloucester CADB members (Marino and Visalli).



Although he was a member of the Gloucester CADB at the time his farm was preserved, Marino was not present at any time his farm was discussed or voted on. Indeed, Marino stated that board members would be asked to leave the premises whenever their own farm or that of an immediate family member was the subject of discussion or vote in the program.<sup>44</sup> Marino has another farm which is in the eight-year preservation program.

### **Gloucester County - Visalli Farm**

Mike and Carmen Visalli are brothers and both are currently members of the Gloucester CADB. At the time Carmen Visalli's farm was accepted into the Farmland Preservation Program during the 1998 funding round, only Carmen Visalli was a member of the CADB. Mike Visalli subsequently joined the CADB. OIG was advised by James Yates, Director of the Gloucester County Farmlands Preservation Program that he has recently been working to preserve an additional 20 acres of Visalli land. Yates observed that the sale of the additional acreage would need to be reviewed for a conflict of interest, in view of the new SADC regulations which require members of a CADB to resign from the board before an application for farmland preservation funds may be considered for a property in which that person or a member of his or her family, residing in the same household, has a financial interest.

Carmen Visalli's farm, which was preserved in July 1999, consists of two contiguous tracts in Elk Township totaling 157 acres. It was included in the 1998 funding round, where, although its initial quality ranking was 78<sup>th</sup>, the farm moved up to 22<sup>nd</sup> in the final ranking, when the owner's discount of almost 20% in the easement price was factored into the equation. The

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<sup>44</sup> James Yates, Director of the Gloucester County program, confirmed this requirement in the county.

land has extensive wetlands (over 35%), but over 76% of the land is harvested and 40% is prime soil. The two county level appraisers concluded that the market value of the land was \$5,000 and \$4,500 per acre,<sup>45</sup> and that the value restricted to agriculture was \$850 and \$900 per acre, respectively, with development easements thus valued at \$4,150 and \$3,600 per acre. The State review appraiser concluded that the agricultural value was \$900 per acre and that the fair market value of the land was \$4,750 per acre, valuing the development easement at \$3,850 per acre. The farm preservation closing took place in July 1999, and the owner received \$3,100 per acre, a discount over the certified price.

The same property had been considered previously in the 1996 and 1997 funding rounds. In 1996, the State certified an easement price of \$3,400 per acre. The owner discounted the price to \$2,950, which moved the farm from 85<sup>th</sup> in the initial ranking to 59<sup>th</sup> in the final SADC ranking of purchase priority. However, in the 1996 funding round, only the top 42 farms were able to be funded. In the 1997 funding round, an easement value of \$3,300 per acre was certified for this Elk Township farm. Visalli again discounted the easement price, to \$2,900, moving the farm from 68<sup>th</sup> in initial ranking to 57<sup>th</sup> in final ranking. In that year, however, only the top 56 farms were funded.

An 89 acre Visalli farm in South Harrison/Harrison in Gloucester County was included in the 2000A funding round. The State certified an easement value of \$3,600 per acre and the owner

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<sup>45</sup> The State review appraiser observed that the \$5,000 appraisal did not address the significant amount of the subject's wetlands, and thus may have overstated the market value of the property. Nevertheless, the review appraiser gave the property "the benefit of doubt regarding its development potential," and set a blended per acre market value of \$4,750. (SADC Review Appraisal, at p. 6).

discounted to \$3,402 per acre. This farm, originally ranked number 155 by the SADC, received a final ranking of 83<sup>rd</sup> in priority of purchase. Purchase of a development easement on this property has been approved and funded. Closing on the easement sale has not yet occurred.

### **Hunterdon County - Blew Farm**

Susan Blew, who operates a well-maintained and attractive 160 acre hog and crop farm in Franklin Township, has been a member of the Hunterdon CADB since 1995. Her farm was preserved through the Agriculture Retention and Development Act a decade earlier, in 1985. Thus, she was not a member of the CADB when an easement on her farm was sold to the program. Indeed, Hunterdon County prohibits CADB members from applying to the program while they serve on the board.

At the time it was preserved, the Blew Farm was described as an active crop farm, primarily in grain production. The farm had substantial frontage and 85 acres were tillable (53%), with 58 wooded acres (36%). A creek flowed through the entire easterly portion in a north/south direction, affecting approximately 16 acres (10%) in a flood hazard area.

Blew received \$900 per acre for the development rights to her farm. As noted, Hunterdon County's ethics policy precludes members of the CADB from submitting applications for their own farms to the Farmland Preservation Program. The Hunterdon CADB has some of the strictest ethical requirements in the State, requiring a board member who wishes to apply to the program to resign one year in advance from the CADB. The same requirement applies to immediate family members of the board member, that is, the member's spouse, siblings, children

and parents.<sup>46</sup> If more distant relatives apply to the program, the CADB member generally will recuse himself from discussion or voting on the matter. Some board members, however, have stayed in the meeting room in the latter circumstances, moving into the audience.

### **Hunterdon County - Hilton Farm**

Patricia Hilton has been a member of the Hunterdon CADB since January 1998. She and her parents both own preserved farms in Hunterdon County, but each farm entered the preservation program prior to her service on the CADB. Indeed, the code of ethics for the Hunterdon CADB always prohibited board members from applying to the Farmland Preservation Program. In 1997, Hilton's parents received \$3,851 per acre for their 70 acre farm in Delaware Township, below the \$5,361 average on easement sale closings occurring by October 2000 in Hunterdon County. The SADC, however, had certified the development easement value on the property as \$5,450 per acre and the Hiltons thus accepted a substantial discount over the certified value. The Hilton Farm was a crop farm with sufficient frontage, some wetlands and some woods. Zoning in the area required three acre lots.

In June 1997, Hilton purchased her own preserved farm from the SADC, which in 1996 had purchased the land in fee simple from the Samuel Kanach Family Limited Partnership and had imposed a development easement. Hilton's own property includes 219 preserved acres in Readington Township, Hunterdon County, and 107 adjacent acres in Branchburg Township, Somerset County. The farm contains 56% prime soils. The farm had been a large dairy farm until

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<sup>46</sup> Current SADC regulations prohibit a board member or the immediate family members residing in the board member's household from applying to the Farmland Preservation Program. Those new regulations do not alter the procedures of the Hunterdon CADB, which has always applied this prohibition.

the death of the owner. The sole heir did not live in the State. As stated above, her farm was preserved prior to her purchase of the land and also prior to her becoming a member of the Hunterdon CADB.

### **Hunterdon County - Peterson Farm**

John Peterson has been the Vice-Chairperson of the Hunterdon CADB for approximately one year and served as an alternate for a year previous to that. The 153 acre Peterson Farm in Franklin Township was put into the program in 1992. The farm was owned by Peterson's mother. Peterson was not a member of the CADB during the pendency of the application on the Peterson Farm and thus had no role whatsoever in the vote or discussion of that application. Peterson noted that Hunterdon County requires a board member to resign prior to making application to the Farmland Preservation Program.

The Peterson Farm was comprised of 53% prime soils and 11% wetlands. It had approximately 600 feet of road frontage. There were two utility easements, cutting a 300 foot wide swath, across the rear third of the property, and a 20 foot wide telephone cable easement across another section of the property. A separate parcel with a dwelling was contained within the farm property and shared a driveway with the farm, but also had its own right-of-way to the public road. The review appraiser found the market value of the land to be \$9,300 per acre, the agricultural value to be \$4,468 per acre, and the resulting easement value to be \$4,832 per acre.

### **Mercer County - Mount Farm**

Gary Mount was an original member of the Mercer CADB. When he decided to apply to the Farmland Preservation Program, he stepped down from the board because Mercer County has a policy that applicants may not be a member of the board for a minimum of two years before

being eligible for the program. After resigning from the Board, Mount waited the requisite two years before applying to enter the program. His application was not accepted, but he applied a few years later and was accepted. Subsequent to his acceptance into the program, Mount was reappointed to the CADB as a result of a vacancy. Mount operates Terhune Orchards, a thriving “pick-your-own” farm located in Lawrenceville, which enjoys substantial local support. On site, in an area excepted from the easement sale, is a heated, indoor, year-round farm store. An apple storage and packing building is also on site. As noted in the appraisals, much of the nearby area is composed of large “high quality” residences on large lots. Other preserved farmland is also adjacent to the Mount Farm.

In 1995, Mount received \$9,000 per acre to preserve his 52 acre farm. The average per acre easement purchase in Mercer County through October 2000 is \$7,103. On the Mount Farm, 50% of the land is in orchard, 20% tillable cropland, 10% pasture and 5% woodland. The remaining 5% of the land contains a residence and small buildings. The farm contains 75% prime soils and, during the 1994 funding round, received a final SADC ranking of 19 out of 61 farms statewide. The farm contains approximately 25% wetlands.

### **Middlesex County - Danser Farm**

Alan Danser, a member of the Middlesex CADB since its creation in the mid-1980s, sold the development rights on his own 131 acre crop farm into the program during his tenure on the board. In 1992, Danser received \$12,004 per acre for the development rights to his Cranbury Township farm.<sup>47</sup> Before applying to sell a development easement on his land to the Farmland

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<sup>47</sup> Danser and his wife purchased the farm for \$350,000 in 1977.

Preservation Program, Danser had sought preliminary approval for a major subdivision of the same property in order to construct 18 single family residences. For a period of time, the two applications moved simultaneously though separately through their respective processes. At the time the application to sell a development easement was reviewed by the State appraiser, it was noted that preliminary subdivision approval had been obtained, but that no construction had yet occurred.

The average per acre easement purchase price in Middlesex County through October 2000 is \$9,173 per acre. The State certified value for the property indicated that the fair market value for the Danser property was \$18,000 per acre and valued the development easement at \$12,500 per acre. The price actually paid to Danser reflects a voluntary discount from the certified value. It is noteworthy that the farm contains 97% prime soils and less than 10% wetlands. In 1991, its year of ranking, the Danser Farm was rated fourth in state-wide quality by the SADC. Danser abstained from all votes and discussions which pertained to his own property.

Eighteen farms had been preserved in Middlesex County through October 2000, with 11 of those in Cranbury Township, four in Plainsboro, one in Cranbury/Plainsboro and two in South Brunswick. Danser received the third highest per acre price of any preserved Middlesex County farm and, while 11 farms were preserved in Cranbury Township itself, Danser received the second highest per acre pay out for a farm in Cranbury Township. The average per acre easement price in the early years of the program in Middlesex County were considerably higher than in some subsequent years.<sup>48</sup> In 1990, the average per acre easement price in Middlesex County was

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<sup>48</sup> In the 2000B funding round, however, an easement value of \$34,800 per acre was certified for a farm submitted by the Township of East Brunswick in Middlesex County. This

\$22,000 (the 91 acre Stults Farm), and in 1992, when Danser sold an easement on his farm, the average per acre price was \$12,125. Easements on two other Middlesex County farms were purchased by the program in 1992, at \$13,320 and \$11,381 per acre. All three farms on which easement purchases closed in 1992 were located in Cranbury Township. Thus, the price received by Danser for the easement purchase on his farm appears to be appropriate for both time of sale and location of the farm.

### **Middlesex County - Stults Farm**

The highest per acre price paid for a Middlesex County farm through October 2000 went to Stanley Stults for his 91 acre farm in Plainsboro and Cranbury. Stults, who is a member of the Middlesex CADB, received \$22,000 per acre for his farm, substantially more than the \$13,320 received for the next highest per acre valued farm located in Cranbury Township. OIG staff visited the Stults farm and found it to be an exceptionally well maintained and attractive farm. The pressures of development are clearly visible in the numerous single family residences constructed nearby. It appears that the farm is both prime property for development purposes and land worth preserving as a farm.

The value for the Stults farm was certified in 1989, at a time when the very active real estate market of the 1980s was slowing but before prices had declined. The appraisals noted that the property consists of five tax parcels located in Cranbury and Plainsboro, with the land divided into four quadrants by existing roadways, each having frontage along two sides. Soils for the Stults Farm were 100% prime and the farm contained no freshwater wetlands. The entire farm is

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property, the Giamarese Farm, is discussed in the following section of this Appendix, which includes several of the more expensive easement acquisitions.



actively tilled. The appraisals noted that the area in which the farm was located is within commuting distance of both New York and Philadelphia, as well as numerous centers of employment throughout the State, and had been an area of “intense residential development” over the past few years. Both the two county-level appraisals and the State review appraisal indicated that the market value of the land was \$27,000 per acre. The two county level appraisers estimated the restricted agricultural value at \$4,000 and \$5,000 per acre, and the State review appraiser found the land to be worth \$5,000 per acre with its use restricted to farming. Thus, the State certified a easement value of \$22,000 per acre.

A farm owned by C. Gordon Stults<sup>49</sup> was also preserved in Middlesex County. OIG was advised, however, that Stanley Stults, who serves on the Middlesex CADB, is unaware of any relationship between himself and this applicant. The application to the Farmland Preservation Program for this 64 acre tract, located on Brickyard Road in Cranbury, was submitted under the business name, Indian Run Associates.<sup>50</sup> Closing on that farm occurred in February 2000 at a per acre easement price of \$3,867. As rated in the 1997 funding round, the C. Gordon Stults Farm is a crop farm located close to the town of Cranbury, with a two unit residence which is rented out. Wetlands comprise 50% of the farm and are located in the southern section along the Millstone River. The soils are 48% prime and rated mostly severe for septic limitations. The two county level appraisals on this farm found its fair market value to be \$11,000 and \$8,000 per acre, and its

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<sup>49</sup> C. Gordon Stults operates a real estate agency in Cranbury Township. With Clifford Stults II, he also owns an additional 39 acres of farmland on Station Road in Cranbury.

<sup>50</sup> SADC computer records incorrectly list the business name of this property as Indian Mills Associates.

agricultural value to be \$2,500 and \$2,000 per acre, with the resulting development easement to be valued at \$8,500 and \$6,000 per acre, respectively. The State review appraiser found the market value of the land to be \$8,000, the agricultural value to be \$2,000, and certified the development easement at \$6,000 per acre.

### **Ocean County - Emley Farm**

Ronald Emley has been on the Ocean County Agricultural Board since it started. Thus, Emley was a member of the CADB when his own Plumsted Township farm was preserved, but did not participate in the vote. He did, however, participate in discussions regarding his own farm. The average per acre easement price paid as of October 2000 among Ocean County's 13 preserved farms was \$2,745, and all of the farms are located in Plumsted Township. Emley preserved two separate sections of his property, one a 167 acre parcel for which he received \$2,856 per acre in 1995, and the other a 75 acre parcel for which he received \$3,100 per acre in 1998. Emley used some of the money received through the preservation program to purchase additional farmland. For example, in August 1996, Emley purchased a 5.15 acre lot for \$6,000. In April 1999, he purchased two lots, approximately five acres each in size for \$14,000.

### **Ocean County - Hallock U-Pick Farm Ltd.**

The highest per acre easement price received in Ocean County, \$6,300 per acre, was that for the 138 acre Hallock Farm on Fisher Road in Plumsted Township. The farm belongs to Hallock U-Pick Farm Ltd., which is a company comprised of Douglass Hallock, a member of the Ocean CADB, and his parents and brother. The farm is a local landmark, a "pick-your-own" that is extremely popular. The farm was placed in preservation in 1991, before Hallock became a member of the CADB.

The Hallock Farm is comprised of almost 70% prime soils, with less than 3% wetlands. It has almost 5,000 feet of frontage. Both county level appraisers found the property to have substantial long term development potential but not to have imminent development pressure. Both appraisers used entirely different sets of comparable sales in arriving at their value

estimates, yet both concluded reasonably similar market values of \$10,300 and \$9,000 per acre. The review appraiser found the market value to be \$10,000 per acre and the agricultural value to be \$3,700 per acre, with the easement value thus being \$6,300 per acre. As stated above, Hallock was not a CADB member when his own farm was preserved.

The general procedure in Ocean County is that a member whose farm is being considered for the Farmland Preservation Program is asked to “step out” or not attend a meeting. The 368 acre farm adjacent to Hallock, owned by Charles Plum Corp., was also placed into the preservation program on November 30, 1993. In March 1994, Hallock purchased 157 acres of that farm for \$461,929.

#### **Ocean County - Vodak Farm**

Mark Vodak has been a public member of the Ocean CADB for approximately six years. He is a professor at Cook College of Rutgers University. He also owns and operates a small Christmas tree farm in Plumsted Township<sup>51</sup> which was included in the 1997 funding round and preserved in 1998.<sup>52</sup> The Vodak Farm is comprised of slightly under ten acres, with 1.39 acres (14%) of that wetlands, dividing the front from the rear almost equally. According to the appraisals of the property, the highest and best use of the property is a minor subdivision with two lots. The market value appraisals were \$9,000 and \$5,000 per acre, with the agricultural value estimated at \$7,000 and \$1,900 per acre, resulting in easement values of \$2,000 and \$3,100 per acre, respectively. The State review appraisal found the market value of the land to be

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<sup>51</sup> Block 84.01, lot 57.01.

<sup>52</sup> In the previous funding round, neighboring property owned by developers Baldachino & Wishengrad had been preserved through the program’s purchase of a development easement.

\$8,000 per acre and the agricultural use to be \$6,000 per acre. Thus, the State certified an easement value of \$2,000 per acre for the property. The owner discounted the value and the development easement was sold to the State at a value of \$1,775 per acre.

### **Salem County - Waddington Farm**

Mildred Waddington is presently serving her second four year term on the Salem CADB. Several years prior to becoming a board member, Waddington had applied to the Farmland Preservation Program, but closing on the easement sale did not occur until 1995. At the time she joined the board, her farm, located in Pilesgrove/Upper Pittsgrove, had just been accepted into the program and she was awaiting the final results. When her farm was discussed by the CADB, she excused herself from the room.

The 205 acre Waddington Farm<sup>53</sup> is over 100 years old. Upon the death of her father, the land was inherited by Waddington and her two sisters. The Farmland Preservation Program enabled her to purchase her sisters' shares of the land and continue farming. Presently her son works the land. Although in earlier years the Waddington Farm had dairy cattle, it currently is used to produce soybeans, corn, alfalfa and beef cattle.

The farm is comprised of 52% prime soils and approximately 73% of the farm is tillable. Approximately 14% of the land is wetlands or wetlands buffers. The property is located in an area of five acre zoning. Approximately 12% of the land is pastured and 13% is woodland.

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<sup>53</sup> Block 43, lot 7, Pilesgrove; Block 31, lot 6, Upper Pittsgrove.

## **Salem County - Ware Farm**

Clinton Ware was a member of the Salem CADB.<sup>54</sup> In 1995, his 152 acre farm in Elsinboro Township entered the Farmland Preservation Program. The farm contained 90% tillable farmland and 10% woodlands. The farm was cultivated in peppers and soybeans and had a total frontage of 3,685 feet. The land was comprised of 50% prime soils and 4% unique soils. The farm contained about 10% wetlands. In addition, almost all of the land is in a flood plain, rendering development difficult. In the 1994 funding round, the farm was ranked 53 out of 61 farms Statewide. The SADC review appraiser certified the easement value at \$1,100 per acre. The development easement was sold to the State at a discounted price of \$1,004 per acre. The State appraiser noted that neither county level appraiser had negatively adjusted the market value of the land based on its position in a flood plain.

Other Ware farms in Salem County have also been preserved through the Farmland Preservation Program.<sup>55</sup> In the 1994, funding round, the State certified an easement value of \$1,100 on a second Elsinboro farm, this one a 156 acre tract. The owner discounted from the certified value and sold the development easement to the program for \$1,040 per acre. A 27 acre

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<sup>54</sup> Clinton Ware's health precluded his being able to speak with OIG staff, and OIG is informed that he has since died. At the beginning of its review, OIG requested a listing of CADB members from the SADC. The SADC stated that it could provide a current listing but was unable to document membership in previous years. Ware's name was included on the SADC listing as a Salem CADB member in late 2000. Without speaking to Ware, however, OIG was unable to determine whether Ware had been a board member at this time his own property was entered into the Farmland Preservation Program.

<sup>55</sup> Because OIG staff was unable to interview Clinton Ware, the relationship between the CADB member and the owners of the other Ware farms in Salem County on which easements were purchased was not confirmed.

Ware farm, located in Pilesgrove in Salem County was included in the 2000A funding round. The State certified an easement value of \$2,300 per acre. Although the easement purchase is approved and funded, the sale has not yet closed.

### **Somerset County - Everett Farm**

Thomas Everett has been a member of the Somerset CADB since 1983 and serves as its chairman. The 93 acre Everett Farm,<sup>56</sup> located in Hillsborough Township, belonged to his parents, is currently owned by his mother as trustee of his father's estate, and was placed into the Farmland Preservation Program in January 1994, while Everett was on the CADB. Everett neither voted on nor participated in any discussions relative to this land. In situations where a board member has a family relationship with a farm applicant, the board member in Somerset County is generally requested to leave the room during all discussions.

The Everett Farm has 2,322 feet of road frontage, is zoned 1.5 acre residential, is comprised of 38% prime soils and 60% unique soils. The farm contains 13 acres of wetlands (approximately 14%) and has a small amount of flood land. Residential development, as well as water and sewer lines, were nearby. The farm is a working farm, and at the time of the application to the program, was used for livestock and for the production of crops. It contains some pasture land.

The county level appraisers estimated the unrestricted value of the property to be \$13,500 and \$13,000 per acre, with the value restricted to agriculture to be, respectively, \$4,300 and \$3,500 per acre. The appraisals noted that, although the per acre market value was high, the value

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<sup>56</sup> Block 144, lot 17.

of the property restricted to agriculture was also high because of the continuing value of the land as an estate property with acreage, thus reducing the value of a development easement. The State review appraiser certified the development easement value at \$7,500 per acre.<sup>57</sup> The Everett Farm easement was discounted to \$7,426 per acre.

### **Somerset County - Nemeth Farm**

Elizabeth Nemeth has owned and farmed her property in Franklin Township since 1952 and is now 87 years old. In addition to farming, Nemeth is a real estate agent and broker. After enrolling her property in the Farmland Preservation Program, Nemeth was recruited by the chairperson to become a board member. Accordingly, she was not a member of the CADB when her own land was preserved.

The 76 acre Nemeth Farm<sup>58</sup> is comprised of 82% prime soils. Approximately 7% of the property is wetlands. Nemeth received \$6,298 per acre for the development rights on her 76 acre farm. This is below the \$8,291 county average. Through October 2000, development easements were purchased, pursuant to the county grant program, on four Franklin Township farms in Somerset County. Prices paid for the development easements on these farms varied between \$6,273 per acre and \$9,597 per acre.

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<sup>57</sup> The range of easement values established by the county level appraisers was \$9,200 to \$9,500 per acre. Thus, the State certified easement value was less than the lower of the two county appraisals. Effective August 2, 1993, however, the certified easement value must be no greater than the higher county appraised value of the development easement and no less than the lower appraised value. *N.J.A.C. 2:76-6.8*. OIG is informed that this regulatory change was required because, since the State review appraiser does not conduct a full appraisal, it would be improper for the reviewer to substitute his judgment for that of the county level appraisers, even though he may strongly disagree with their analysis or conclusions.

<sup>58</sup> Block 37.02, lot 46.04.





## **Somerset County - John Vermeulen & Son, Inc.**

Two separate applications to the Farmland Preservation Program, one by Somerset CADB member J. Peter Vermeulen and his wife and the other by his company, John Vermeulen & Son, Inc., were joined in the 2000A funding round. When the properties were being considered by the Somerset CADB in September 1999, Vermeulen recused himself. He did not attend the board meeting where the properties were discussed and did not know how the individual board members had voted on the applications. When he learned that the new regulations prohibited CADB members from applying for development easements, Vermeulen tendered his resignation to the board. He was, however, advised that the requirement was not retroactive. Thus, his resignation was neither required nor accepted.

The two Vermeulen parcels, located in Branchburg Township, were comprised of 56% prime soils and 3.2% unique soils. About 90% of the land was tillable and 97% of the cropland was harvested. The land was used as part of the Vermeulens' nursery business. It was located in an area zoned for agriculture or three acre residential lots. The property was abutted on one side by residential development, although a railroad right-of-way served as a buffer between the farm and the houses. The property was contiguous to other restricted farms, including the Foxcroft and Kanach properties. Three acres of this parcel were to be excepted from the easement sale for the construction of a future home, and the excepted area was severable from the remaining acreage of the tract.<sup>59</sup> The remaining 53 acres were to be preserved. Approximately 80% of the land had

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<sup>59</sup> Thus, in the future, the excepted area could be conveyed separately from the preserved acreage and, conversely, a sale or transfer of the preserved land need not include the three acre exception.

severe limitations for septic systems. There was neither sewer nor water in the area.

The appraisals found the parcel to have an unrestricted market values of \$11,000 and \$13,000 per acre and, respectively, a value restricted to agriculture of \$3,000 and \$3,200 per acre. Thus, the two county-hired appraisers found the value of a development easement on the property to be, respectively, \$8,000 and \$9,800 per acre. The State review appraiser found the easement value to be \$8,800 per acre.

### **Warren County - Schnetzer Farms**

Joel Schnetzer, a member of the Warren CADB, is one of the few remaining dairy farmers in New Jersey and has had three properties placed into the Farmland Preservation Program. The properties, comprised of 113 acres, 21 acres and 127 acres, are all located in Franklin/Washington Township. Schnetzer received \$5,131, \$4,579 and \$3,680 per acre, respectively, on the three properties, each development easement reflecting Schnetzer's voluntary discount over the certified value. The average Warren County development easement, as of October 2000, is valued at \$3,834 per acre.

Schnetzer has been on the Warren CADB since 1989, but did not participate in the vote on any of his properties. Under the Warren County procedure in place when Schnetzer made his three applications to the program, the farms applying to the preservation program were first assigned to a three person subcommittee to review and rank. The members of the subcommittee have no farmland ownership and were viewed as objective and disinterested in their evaluations of the properties.

The first Schnetzer parcel, which straddles the Washington and Franklin Township boundary, entered the Farmland Preservation Program in 1991. This area of the Schnetzer

properties is composed of 97% prime soil and includes a working dairy complex. The land contained minimal wetlands and had substantial usable frontage. The State's review appraiser found a fair market value of \$9,000 per acre, and a value restricted for agriculture as \$3,500 per acre. Thus, the State certified an easement value of \$5,500 per acre.

The second Schnetzer parcel, part of the estate of Joel Schnetzer's father, was also located in both Franklin and Washington Townships. This parcel was 100% prime soil with no wetlands. This was a small piece of property with good frontage, appeared to be good cropland, and was located close to other farms. It had good subdivision possibilities in an area which consisted mostly of farms with some newer high quality rural residences on several acres. The two county level appraisers estimated the market value of the land at \$7,000 and \$7,900 per acre, respectively, and the State review appraiser found the market value to be \$7,600 per acre. The value of the land restricted to agricultural use was found to be \$2,200 and \$3,200 per acre by the county appraisers and the State reviewer found the agricultural value of the land to be \$3,000 per acre. Thus, the State certified an easement value of \$4,600 per acre.

The third Schnetzer parcel, located in Franklin Township, was comprised of 80% tillable acres, 6% pasture and 14% woodland, with no known wetlands on the land. The parcel contained approximately 65% prime soils. The county appraisers estimated the fair market value at \$6,800 and \$3,500 per acre, and the agricultural value at \$1,900 and \$1,500, respectively. The State review appraiser found the market value to be \$5,800 per acre, the value restricted to agricultural use to be \$1,700 per acre and the resulting easement value to be \$4,100 per acre.

### **Warren County - Terpstra Farm**

Orrie Terpstra is chairperson of the Warren CADB and has been a member of the board

since its planning phase in 1981-1982. Originally, the board had a three member subcommittee which would review all applications and forward those which were acceptable for preservation to the entire board for review. Currently, the full board reviews all applications and forwards their recommendations to the Freeholders' Office and the State. Prior to the board's evaluation, the application is reviewed and rated by the county's Soil Conservation Administrator.

In 1995, Terpstra sold the development rights on his 109 acre farm in Knowlton Township into the Farmland Preservation Program. At the same time, the Millheim Farm, part of the estate of Ada Millheim, for which Terpstra's wife Frances was executrix and which she and her siblings own and run, also entered the Farmland Preservation Program. When the CADB reviewed the Terpstra application and that of his wife, he was not present for either the discussion or decision.

The Terpstas' 109 acre farm had 30 acres of tillable cropland, 60 acres of pasture and 10 acres of woodland. The farm was a working dairy farm, with 70% in open fields used for raising fodder crops or pasture. The farm was comprised of 34% prime soils, rolling in contour with no steep slopes which would impede farming. A utility easement crossed the property, although no powerlines, poles or towers had been constructed on the property. The farm is in a desirable location, close to the scenic Delaware Water Gap. The market value of the property was set at \$5,500 and \$3,200 per acre by the two county appraisers. The State reviewer noted that the first appraisal's comparable sales were in a different location, which may have resulted in higher values. The reviewer also noted that the second appraisal's comparables may have been less adaptable for development than was the Terpstra farm, resulting in an artificially low market value estimate. The review appraiser found the market value to be \$4,300 per acre. The appraisals indicated the value of the farm restricted to agricultural use was \$1,100 and \$1,400,

respectively. The review appraiser found the agricultural value to be \$1,200 per acre and certified a development easement value of \$3,100 per acre. During the 1994 funding round, the farm was ranked last in Warren County and 55th out of 61 farms in the SADC's initial quality ranking. The final SADC ranking of this farm was 41 out of the 51 farms approved for easement purchase in the 1994 funding round. The farm is currently used to raise beef cattle, corn, oats and hay.

The farm placed into the program by Terpstra's wife was 161 acres and was preserved in 1995 at a cost of \$2,970 per acre. This farm, formerly owned by his wife's parents, is adjacent to Terpstra's farm and was, also, formerly a dairy farm, which is currently used to raise beef cattle and grow corn, oats and hay for cattle consumption.

## **Section II: Review of More Expensive Easement Acquisitions**

### **Burlington County - Stokelan and Fieldstone Farms**

While, between 1994 and 2000, the average price paid for a development easement in Burlington County has ranged between \$2,500 and \$4,500 per acre, in the 1999 funding round easement values of \$24,785 and \$23,100 per acre were certified on two Burlington County farms, the 70 acre Fieldstone Farm and the 155 acre Stokelan Farm in Medford Township. *See Table on following page.* Closing on the sale of the development easement on the Stokelan Farm occurred on July 26, 2000, at a per acre cost of \$19,815, a discount from the certified value.

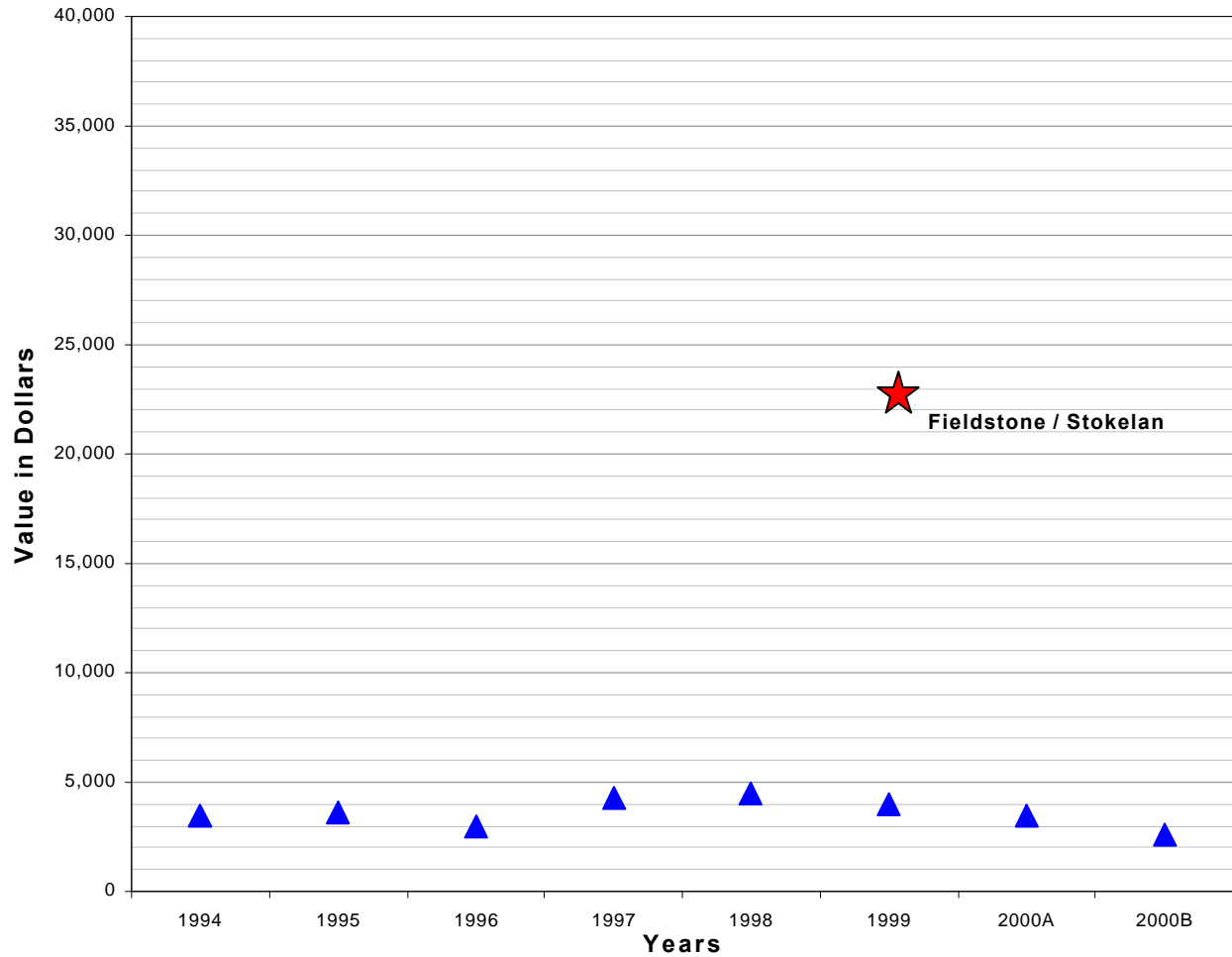
The Stokelan Farm had been part of a \$6,250,000 fee simple purchase by Medford Township and Burlington County, which thereafter imposed a development easement on the tract and sold it, for \$520,000, as a preserved farm.<sup>60</sup> The county then submitted the farm to the Farmland Preservation Program for partial reimbursement of the easement value. Of the purchase price, \$4,362,500 was allocable to Stokelan Farm (at approximately \$28,145 per acre). The remainder of the purchase price, \$1,887,500, was allocable to Medford's purchase of the 70 acre Fieldstone Farm (at approximately \$26,965 per acre). Medford purchased the farms to settle a *Mt. Laurel II* builder's remedy suit<sup>61</sup> brought against the township by a company which claimed that it intended to build 2,090 dwellings on the Fieldstone and Stokelan Farms. The area in which the farms were located was zoned one dwelling per four acres, a density of .25 dwellings

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<sup>60</sup> Since \$4,362,500 of the purchase was allocable to Stokelan Farm, this indicated that the tract retained an agricultural value of approximately \$3,355 per acre and demonstrated that the cost of placing a development easement on the property was approximately \$24,790 per acre.

<sup>61</sup> *See Southern Burlington County N.A.A.C.P. v. Township of Mt. Laurel*, 92 N.J. 158 (1983) (*Mount Laurel II*).

**Table: Burlington County Certified Easement Value Per Acre**



▲ = Average certified easement values per acre, excluding the Fieldstone and Stokelan transactions.

★ = Average certified easement value of the Fieldstone and Stokelan farms.

per acre. Through its lawsuit, the company demanded a zoning density increase to approximately 8.5 dwellings per acre. The litigation was eventually resolved when Medford Township purchased the Stokelan and Fieldstone Farms. As noted, the company received \$28,145 per acre for the Stokelan Farm, from which, pursuant to a previous agreement with the land owners, it



then paid members of the family which had owned and lived on the farm for generations \$12,500 per acre.

The property was in "Planning Area 4" zoning, an area where development was not encouraged. Medford Township did not, however, have a farmland preservation program when it was sued in November 1996. According to Town Council members, the purchase of the Stokelan and Fieldstone Farms "initiated" a farmland preservation program in Medford Township and was undertaken, at least in large part, to settle the litigation and put a halt to overdevelopment of an area intended for limited growth.<sup>62</sup> In late 1996, the owners of the Stokelan Farm executed an option to sell their land in fee simple for \$12,500 per acre to a development company, RIS Associates, with closing to occur by December 31, 1998. If closing did not occur by that date, the owners could either cancel the agreement or continue with it and receive a price of \$15,000 per acre for their farm. The option to purchase detailed that the purchaser would be filing a *Mount Laurel II* lawsuit by December 31, 1996.

The lawsuit was filed in November 1996. The plaintiff in the builder's remedy lawsuit was a different corporation, Medford Affordable Housing, Inc., which had been formed less than a week before filing the lawsuit. A local attorney was the sole corporate officer. In court filings, Medford alleged that the local attorney, who had been the solicitor for the Township of Medford in 1986, had a role in drafting Medford's affordable housing plan, which he was attacking in the builder's remedy lawsuit. The tract did not have sewer service, although the plaintiff stated it

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<sup>62</sup> Farmland preservation in Burlington County has been concentrated in Chesterfield, Mansfield, North Hanover, Southampton and Springfield Townships. OIG is advised that Burlington County is also seeking preservation of additional farms in the area of the Stokelan and Fieldstone Farms. The Stokelan and Fieldstone acquisitions were the first farmland preserved in Medford Township.

could be provided. In its responding legal filings, Medford disputed that the plaintiff was capable of providing sewer service to the tract. Without sewer service, the property could not have been developed as the plaintiff claimed.

In August 1998, Susan E. Craft, Land Use Coordinator of Burlington County, advised the County Administrator that Medford Township had reached an informal agreement on a purchase price of \$6.25 million for the Stokelan and Fieldstone Farms and that she and Freeholder Haines had conveyed to Medford officials the county's "potential willingness to participate financially in the purchase of the farmland easement" in the context of a "comprehensive farmland preservation plan for the Township." Craft asked that the issue of the county's paying up to \$3 million towards the acquisition be placed on the agenda for an upcoming Freeholder Conference. Craft also noted that, although a maximum amount had been discussed, she had advised Medford that no minimum level of county funding could be determined until appraisals were conducted.

On September 16, 1998, the Medford Township Council adopted a resolution authorizing the execution of a conditional agreement to acquire the Fieldstone and Stokelan Farms. The resolution noted that the County of Burlington was to contribute up to \$3,000,000 toward the acquisition and would thereafter apply to the SADC for monetary contribution, half of which would be passed on to the Township. Also on September 16, 1998, and in accord with the requirement previously noted by Burlington County Freeholder Haines and Land Use Coordinator Craft, the Township adopted a resolution stating its interest in farmland and open space preservation and that the acquisition of the Fieldstone and Stokelan Farms would constitute a "substantial first step in the Township's farmland preservation efforts" which "will ensure the preservation of farmland while limiting residential development and the costs related thereto."

At the September 16, 1998, meeting of the Medford Township Council, one council member pointed out the long term savings for the Township and emphasized the importance of preserving pristine farmland. Another council member stated that he had no problem deciding to acquire this land when he “did the math” and considered the potential development consequences. He stated that the Township had to consider the acquisition for future generations who would otherwise have to deal with the effects of the anticipated development of this land. One member stated her concerns with the purchase price. This council member stated that she felt the price of \$6.25 million would set a precedent which would negatively affect such land acquisitions in the future. This council member also questioned whether the council would have the final appraisal for review before the meeting of December 2, 1998, at which the bond ordinance was to receive final review. The township attorney responded in the affirmative and added that the appraisals supported the acquisition value. A member of the public asked that the Township look ahead and try to avoid being a victim in the future, as he considered the cost too high for the acquisition of the Fieldstone and Stokelan Farms.

The following day, on September 17, 1998, MAH, the company which had brought the lawsuit, signed an agreement with the Township of Medford under which the Township agreed to pay \$6,250,000 for the Fieldstone and Stokelan Farms, with \$1,887,500 allocable to the Fieldstone Farm and \$4,362,500 allocable to the Stokelan Farm. In accordance with the Township’s September 16 resolution, this conditional agreement was signed on behalf of the Township of Medford on September 23, 1998. The agreement related that the County of Burlington had agreed to pay a portion of the price to be paid to MAH and that an application would be made to the State for additional monetary reimbursement to the Township. The

agreement also stated that it was made contingent on the county's subsequently documenting its agreement with the Township to pay a portion of the price, and further contingent on the Township Council's adopting a bond ordinance to fund the purchase. Medford retained the right to cancel the agreement on or before November 4, 1998, if it was not satisfied with the final agreement (including the monetary contribution offered by the county). MAH retained a right to cancel the agreement if closing did not occur by December 15, 1998. At settlement, MAH agreed to deliver executed dismissals of the *Mt. Laurel* suits pending against the Township.<sup>63</sup> Pending closing, the lawsuits were placed in an inactive status. As part of the agreement, both MAH, Inc., and its sole corporate officer individually, agreed, for a period of two years, not to make development applications in the Township's proposed overlay zone for affordable housing or institute legal or administrative proceedings with respect to the Township's affordable housing compliance.<sup>64</sup>

Appraisals estimating the values of the Stokelan Farm and Fieldstone Farm as of September 1, 1998, were prepared and were provided to Burlington County on October 20, 1998, and October 26, 1998.<sup>65</sup> Both appraisals noted that the seller of the property (MAH, Inc.) had signed an agreement to sell the Stokelan Farm to Medford Township for \$4,362,500 and the

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<sup>63</sup> One suit was pending in Superior Court in Burlington County, Law Division, and the other was a pending administrative law action before the Council on Affordable Housing.

<sup>64</sup> Although Stephen D. Samost, Esq., on behalf of RIS Associates, had executed the sale agreement with the owners of the Stokelan Farm, he was not a party to this agreement with the Township of Medford. Accordingly, Samost's own litigation against the Township, including his own builder's remedy lawsuit, was not affected by Medford's settlement of the litigation involving the Stokelan Farm.

<sup>65</sup> Thus, an agreement on the amount to be paid to purchase the farms in settlement of the litigation was made prior to appraisals being made of the properties.

Fieldstone Farm for \$1,887,500. One appraiser observed that his market value estimates for the Stokelan Farm “assume the accuracy and veracity of a provided Agreement of Sale, partially executed<sup>66</sup> covering the subject as part of a larger conveyance for an agreed sum of \$6,250,000 between Medford Affordable Properties [*sic*]and the Township of Medford.” That appraiser also noted that his market value estimates further assume “all necessary approvals permitting the development of the subject tract with intensive multi-family use with 2,000± residential units of at least 341 low and moderate income housing units to be constructed on 230± acres of which the subject (160± acres) is part thereof.” Both appraisals of the tract assumed in valuing the land’s development potential that sewer service was available, thus substantially increasing the value of a development easement on the property.

The appraisals of the Stokelan and Fieldstone Farms used comparable sales occurring between 1994 and 1995. The appraisal on the Stokelan Farm estimated a fair market value of the farm of between \$26,560 per acre and \$27,000 per acre. The value restricted to agriculture was estimated by both appraisers to be \$3,500 per acre. The State review appraiser also observed that a contract to sell the Stokelan Farm for \$4,362,500 had been executed by the seller. The State certified an easement value of \$3,696,000 (\$23,100 per acre) on the property. It was noted that the soils were 80% prime and that 83% of the tract had either slight or moderate limitations for septic absorption purposes. Wetlands comprised approximately a third of the farm.

The appraisals on the Fieldstone Farm indicated that the soils were 64% prime and that 85% of the site had only moderate or slight septic limitations for percolation. The tract was

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<sup>66</sup> Although Township officials signed the agreement on September 23, 1998, it appears the appraisers had been provided the copy signed only by MAH, Inc., on September 17, 1998.

found to contain approximately 25% wetlands. The unrestricted fair market value of the Fieldstone Farm was estimated to be between \$28,570 and \$30,000 per acre. The value restricted to agriculture was estimated at between \$3,785 and \$3,600 per acre, respectively. The State reviewer found the fair market value to be \$28,570 per acre, the restricted value to be \$3,785 per acre and, thus, certified an easement value for the Fieldstone Farm of \$1,736,350 (\$24,785 per acre).

On December 2, 1998, Medford Township adopted an ordinance authorizing acquisition of the Fieldstone and Stokelan Farms. At the meeting of the Township Council regarding passage of this ordinance, three council members remarked that they had insufficient time to review the appraisal for the acquisition. One of these members additionally remarked that she believed the council was not showing fiscal responsibility because in her opinion the acquisition was “grossly overpriced.” One member commented that he was pleased that the county had met its commitment to provide \$3,000,000 toward the acquisition. Susan Craft of the Burlington County Office of Land Use Planning, representing the county’s farmland preservation program, responded that the council members were being provided “special privileges” to review the appraisal, even though they were considered the landowner and the appraisals are not ordinarily shared with the landowner. One council member expressed satisfaction at preserving the Fieldstone and Stokelan Farms because of the potential cost to the taxpayers if the development sought on the properties had occurred.

In late December 1998, the record owners of the Stokelan Farm and RIS Associates signed an amendment to the opinion contract noting that RIS would assign its rights under the

agreement to MAH. Closing on the sale of the Stokelan Farm to Medford Township occurred by deed dated January 5, 1999. At that time MAH and the record owners of the property acted jointly as Grantors in conveying the farm to Medford. The deed recited that MAH joined in the deed to convey any interest it had in the property. Following the closing on the farms, Medford Township, through a formal resolution, authorized the sale of the development easements on the Fieldstone and Stokelan Farms to Burlington County. In consideration of the sale, Burlington County would pay Medford \$3,000,000 plus one-half of the amount received from the SADC.

The Township of Medford sold both the Fieldstone Farm and Stokelan Farm, with development easements, to interested buyers. The Fieldstone Farm was purchased for \$207,000 restricted to agriculture. The Stokelan Farm as restricted was purchased for \$520,000 by a New York company.

#### **Cape May County - Bartle Farm**

The second highest per acre easement price paid in Cape May County through October 2000 was \$7,017 for the 58 acre Bartle property in Lower Township.<sup>67</sup> The property was included in the 1995 funding round. The price reflected a discount from the \$8,771 per acre easement value certified by the SADC. As is the usual procedure in Cape May, this property was first purchased by the county and then submitted to the Farmland Preservation Program by the

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<sup>67</sup> Block 741.04, lots 15.01 and 24. The address of the Bartle property was 910 Shunpike Road, which is relatively near the second Hayes property (814 Shunpike Road) described below. As indicated, the Hayes properties, at \$23,000 and \$17,100 per acre, were the highest Cape May County easement values certified by the SADC, although certification of an easement value for the Rea farm is pending. (See Section I of this Appendix).

county.<sup>68</sup> On January 17, 1995, the county paid \$505,350 for an easement on the Bartle property.

The Bartle property contained 79% prime soils and was used 100% to produce crops. There was some development in the area and the land was located close to the Cape May Canal and the town of Cape May. The county level appraisers estimated the market value of the tract at \$10,000 and \$9,500 per acre and agreed that the value restricted to agriculture was \$1,000 per acre. The SADC review appraiser estimated the unrestricted market value at \$10,000 per acre, the agricultural value at \$1,000, and the resulting easement value at \$9,000 per acre. Bartle subsequently sold the property, restricted to its agricultural use, for \$150,000 in November 1997. The current owners of the property reside in Cape May Court House, Middle Township.

#### **Cape May County - Cape May Winery and Vineyard**

William H. Hayes, Jr., and his wife Joan operate the Cape May Winery and Vineyard from their home on Town Bank Road in Lower Township.<sup>69</sup> They have submitted two separate applications to the Farmland Preservation Program.<sup>70</sup> One application was for a six acre parcel they have owned since the 1980s and the other for a nearby six acre parcel which they recently purchased. Lower Township consists of approximately 27 square miles and is comprised of three communities: Villas, Townbank and North Cape May. The address of the Hayes' home is in North Cape May.

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<sup>68</sup> The first two easement purchases from Cape May County, which closed in 1991 and 1993, respectively, were not directly purchased by the county. Since that time, every easement purchase from Cape May County has been purchased directly from the owner and then submitted by the county to the State program for reimbursement.

<sup>69</sup> According to file documents, the Hayes' business is incorporated as WJRB, Inc., but trades as Cape May Winery and Vineyard.

<sup>70</sup> The easement sales had not closed by October 2000.



On June 30, 1998, the Hayes sold a development easement to the County of Cape May on their six acre property on Town Bank Road for approximately \$22,077 per acre, for a total of \$142,926. The easement was placed on four separate lots, Lots 10.02, 10.03, 10.04 and 10.05, of their Town Bank Road property.<sup>71</sup> Cape May County thereafter submitted the property to the SADC for reimbursement during the 1999 funding round. The SADC certified an easement value of \$23,000 per acre for the property.

The area in which the Hayes' property is located primarily consists of semi-rural residences. Nearby are tract homes in a modest neighborhood. The lots are located in an area which is zoned to require one acre lots and 150 feet of frontage with septic systems, or one-half acre and 100 feet of frontage with public sewers. One of the lots is a little over 5 acres in size and the other three are undersized for septic but adequate for public sewers, which appear to be available to the site. The larger lot is flag-shaped with most of its acreage behind the other lots and less than 100 feet of road frontage. Hayes purchased the three smaller lots in 1981 and the larger lot in 1985. The lots are used to grow grapes and the land is 100% harvested. The soil on the six acres of land are largely prime. A portion of the soil located in the rear of the lot, approximately 20%, was described on soil maps as "Pocomoke" soil, that is, soil with a seasonal water table at the surface prohibiting the use of septic systems. The remainder of the soil had only slight septic limitations.

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<sup>71</sup> The Hayes own one other contiguous lot - Block 503.01, lot 10.06 - on which their house is situated.

One of the two county level appraisers suggested that the highest and best use of the property would be as four building lots with a single family dwelling on each. The appraiser suggested that the lots “should be able to be connected” to public water and sewer systems, apparently through the Lower Township Municipal Utilities Authority. The appraisers estimated the unrestricted market value of the property to be \$25,167 and \$23,500 per acre and the development easement on the property to be valued at \$23,767 and \$22,300 per acre respectively.

Before the easement sale had closed with the SADC on their Town Bank Road winery property, William and Joan Hayes purchased another six acre parcel.<sup>72</sup> This second tract, located on Shunpike Road, was purchased in August 1997 for \$80,000. A development easement on the property was then sold to Cape May County, which submitted the land to the SADC for reimbursement. Cape May County’s application for this second six-acre Hayes property was submitted during the 2000A funding round. At that time, the SADC certified the value of a development easement on this property at \$17,100 per acre (for a total of approximately \$106,200 to place an easement on this 6.21 acre tract owned by Hayes). At the time Hayes purchased the tract, it was vacant land (non-farm) and was assessed for tax purposes at \$67,400 for the 6.21 acre tract (approximately \$10,853 per acre). As noted, Hayes purchased the property in fee simple for approximately \$12,882 per acre in late 1997. When Cape May County submitted the Hayes’ tract to the Farmland Preservation Program, it was being used as a hay farm and was assessed, as farmland, at \$3,400 for the entire tract. Hayes indicated that the use as a hay farm was transitional until the tract could be incorporated as part of his winery and vineyard.

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<sup>72</sup> Block 499.01, lot 10.

Hayes submitted an application to sell a development easement to the county on this second parcel approximately one year after he purchased it, and approximately two months after he received money from Cape May County for selling an easement on his original property on Town Bank Road. Cape May County purchased an easement on this second Hayes tract and

submitted it to the SADC for reimbursement. The GSPT was responsible for approving this purchase.

This second six acre parcel had only 60 feet of frontage. The tract was in a “T” shape, with a long driveway, 60 feet in width, leading back to the main acreage, which was essentially in a large rectangular shape and located behind other lots fronting Shunpike Road. A large water tower is located on a smaller lot immediately adjacent to the property and renders the Hayes property less physically attractive for development. No note of the proximity of the tower, which is on a lot belonging to a third party, is made in the appraisals.

The soils on the second six acre parcel are 100% prime and have mostly slight septic limitations. Of the tract, 2.4 acres are rated as moderate septic limitations, with a seasonal water table which is moderately high. Both appraisers found its highest and best use would be as residentially developed. The tract was in the same area as the Hayes’ winery and was subject to one acre zoning and 150 feet of frontage with septic systems and one-half acre and 100 feet frontage with public sewers. Although the SADC certified an easement value of \$17,100 per acre for the property, the county discounted the value 10% to \$15,390 per acre.

### **Cape May County - Novasack Brothers**

Leo and Walter Novasack operate Novasack Brothers Turf Farms, Inc., in Cape May County. Cape May County purchased a development easement on 330 acres in Dennis Township from Novasack Brothers in December 1997 for approximately \$7,985 per acre. Cape May County then submitted the land to the SADC during the 1998 funding round for reimbursement, with appraisals asserting easement values of between \$9,100 and \$9,901 per acre. The land was in an area with some development and was then being used as a large sod farm. The submission

consisted of three non-contiguous parcels with 50 subdivided lots, most along the frontage and of about one acre each.<sup>73</sup> It thus appeared that the owners had originally considered development sales for at least part of the property submitted for farmland preservation. It is not clear what altered that original plan.

The land was comprised of approximately 36% prime soils, with minimal wetlands and mostly slight limitations for septic construction. Although zoning in the area in which the lots are located requires three acre lots, these smaller lots are “grandfathered.” The State review appraiser noted that the appraisers had difficulty in finding truly comparable large acreage sales in Cape May County because most such sales were to government agencies. One county level appraiser valued each subdivided lot separately, estimating a gross retail price of \$30,000 per lot and, working backwards by deducting costs of sale such as real estate taxes and legal expenses, reached a net value of \$15,020 per lot.

The State reviewer stated that he was “concerned with an application with such a high value and two appraisals that do not provide enough data to make an intelligent estimate of value.” The review appraiser expressed his opinion that the program should not certify a value greater than the sale price of the property, which had occurred only three months earlier, *i.e.*, less than \$8,000 per acre. Nevertheless, the appraisals submitted by the county followed appraisal

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<sup>73</sup> Of the 50 subdivided lots, 38 were 0.919 acre in size, and the other 12 lots varied in size between 0.923 and 1.34 acres. The addresses of the lots were 123, 127, 133, 139, 145, 151, 157, 163, 175, 181, 187, 193, 199, 205, 210, 211, 216, 222, 228, 234, 240, 246, 254, 260, 290, 296, 302 and 306 Gracetown Road, 234, 242, 248, 256, 262 and 268 Dennisville Road, 544, 554, 560, 566, 572, 578, 584 and 590 Kings Highway and 192, 211, 255, 261, 267, 275, 283 and 289 Corson Tavern Road. Larger lots were also preserved as part of this application: 204 Gracetown Road (22 acres), 235 Gracetown Road (43 acres), 314 Gracetown Road (16 acres), 322 Gracetown Road (34 acres), 224 Dennisville Road (40 acres), 179 Corson Tavern Road (19 acres), 203 Corson Tavern Road (60 acres) and 353 Corson Tavern Road (51 acres).

standards and the review appraiser stated that he did not have a basis to doubt the judgment of the two appraisers, “however scarce the data is and minimal the explanations for the adjustments.”<sup>74</sup> Accordingly, the review appraiser was constrained to select a certified value within the range of the two appraisals submitted by Cape May County, that is, between \$9,100 and \$9,901 per acre. The easement value was thus certified at \$9,100 per acre, almost \$368,000, or \$1,115 per acre, more than Cape May County had paid for its easement on the land only three months earlier.<sup>75</sup>

State regulations now require that the State share of an easement be based on the lower of the certified easement value or the price actually paid for the easement by the county.<sup>76</sup> Additionally, the county or town which purchased the easement must apply for reimbursement from the SADC within three years of the purchase. The price eventually paid for the development easement on the Novasack Brothers property, pursuant to the Agriculture Development and Retention Act, was \$7,964 per acre, and, through October 2000, was the highest per acre price paid in Cape May County for a farmland easement. The average easement cost in Cape May County in that same time period was \$2,651 per acre.

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<sup>74</sup> SADC review appraisal, at p. 6.

<sup>75</sup> Cape May County entered a contract with Novasack Brothers on July 31, 1997, to purchase a development easement for a consideration of \$2,627,219.24. For purposes of the SADC application thereafter made by the county, appraiser Frankenfield estimated the value of the development easement to be \$3,257,000, \$9,901 per acre, as of September 1, 1997. Frankenfield estimated the market value of the land to be \$10,851 per acre and the agricultural value to be \$950 per acre.

<sup>76</sup> See *N.J.A.C. 2:76-6.11(d)*.

### **Cape May County - Rea Farm**

Because Leslie Rea is a member of the Cape May CADB, the county's purchase of development easements on his West Cape May farm, at \$26,500 and \$12,300 per acre, is discussed in the preceding section of this Appendix. Although the county, as the contract purchaser of the easement, submitted the application to the SADC for reimbursement, the SADC has requested a legal opinion from the Division of Law as to whether the application contravenes the new regulations prohibiting CADB members from applying to the program.

### **Cumberland County - Bergamo Farm**

The highest per acre price paid through October 2000 for a development easement in Cumberland County, \$4,200, was for the 27 acre Bergamo Farm in Vineland City.<sup>77</sup> The farm, included in the 1999 funding round, was a vegetable crop farm, comprised of more than 75% prime soils, with 77% of the land harvested. Less than 15% of the property was wet or flood lands. The parcel was composed of two non-contiguous tracts divided by a public thoroughfare. It is located in a neighborhood of residential/agricultural zoning of 5.74+ acre residential lots.<sup>78</sup>

In using comparable sales to estimate the market value of the property, both appraisers found two sales of parts of this same farm, made to the current owners of the subject property, to

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<sup>77</sup> During the 2000A funding round, an easement value of \$4,300 per acre was certified for a 42-acre tract in Vineland. During the 2000B funding round, the SADC certified an easement value of \$4,650 per acre for a 69-acre Vineland property. Thus, all of the more expensive easement purchases in Cumberland County are in Vineland, indicating the probability that the location of the tracts is primarily responsible for the higher price.

<sup>78</sup> There are a number of tracts assessed as farmland in the area of the Bergamo farm, including the Badaracco, Barsuglia, Bertonazzi, Cheli, Deola, Ferrari, Franceschini, Magolda, Melini, Pagano, Periconi, Scrivani and Smaniotto properties.

be highly influential. The Bergamos had purchased 13.32 acres<sup>79</sup> of their farm in September 1995 for \$70,000 (\$5,255 per acre). In March 1997, they purchased the remainder of the farm, 14.43 acres,<sup>80</sup> for \$167,000. This second tract included a multi-family residence, which the Bergamos, who live offsite, appear to rent to others.<sup>81</sup>

#### **Gloucester County - Kandle Land Associates, L.L.C.**

During the 1997 funding round, the SADC certified a development easement value of \$18,900 per acre on the 37 acre property in Washington Township belonging to Kandle Land Associates. An easement on the property was sold to the program on September 29, 1998, at a discounted price of \$11,500 per acre, far above the average county easement value of \$2,934.

Kandle Land Associates is a general partnership comprised of members of a family farm – West Kandle, Jr., and his wife Jean and son West Kandle III. The actual tract contained 84 acres of land and the owners excepted 47 acres, leaving only 37 acres preserved through the program. The property had water and sewer available from the rear of the property and the exception was to the rear of the tract and was approved for the construction of over 100 residential lots. The preserved parcel had wetlands buffers adjoining the excepted land.

The SADC certified an easement value for this property of \$18,900 per acre and the price actually paid for the easement was substantially discounted from that certified value. OIG found

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<sup>79</sup> Block 669, lot 16.1 (Piacenza Avenue).

<sup>80</sup> Block 668, lot 9 (East Chestnut Avenue).

<sup>81</sup> Buildings on a tract do not add value for purposes of the worth of a development easement, because such an easement merely affects the construction of additional structures and purchases no interest in existing structures. Using the year 2000 tax assessment for this second parcel, the building alone is assessed at \$81,600.



that this was the only easement purchase made by Gloucester County in Washington Township. Most Gloucester County farms preserved are located in Elk, Harrison or South Harrison Townships.

### **Hunterdon County - Robert M. Manners Trust Property**

The 123 acre Manners property,<sup>82</sup> located on Wertsville Road in East Amwell Township, received the highest per acre development easement price in Hunterdon County. The State certified a development easement value of \$12,500 per acre, and Manners discounted that price, so that the State actually paid \$11,584 per acre. The Manners property has substantial frontage, and is comprised of almost 70% prime soils. The land is approximately 90% tillable. At the time of the easement purchase, the farm was used to produce field crops such as corn, soybeans, hay/pasture and small grains. The farm was located in an area zoned for three acre single family residences. All appraisers agreed that the fair market value of the land was \$15,000 per acre and that the value restricted to farming was \$2,500 per acre.

### **Mercer County - Radvany Property**

The 23 acre Radvany Farm in Hopewell Township, part of the 1998 funding round, was one of the most expensive per acre easement purchases made in Mercer County. The certified value of the development easement was \$19,500 per acre, but the easement price eventually paid was \$16,923 per acre. The tract already contained a slight encumbrance in the form of a conservation easement which contained about 3/4 of an acre wetlands. Approximately 2/3 of the soils were prime. The soil possessed moderate to severe septic limitations. At the time of the purchase, there was a contingent “as is” sale contract on the property for \$575,000

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<sup>82</sup> Block 35.01, lot 8; Block 23, lots 12, 12.01.

(approximately \$25,000 per acre), providing a life estate to the grantors. Little weight was placed on the contract, however, because it contained several contingencies, depending on the occurrence of subsequent events. The appraisers found the market value of the property to be \$22,000 and \$22,500 per acre and the review appraiser found the same to be \$22,300 per acre. The appraisers estimated the value restricted to agriculture to be \$2,500 and \$2,600, respectively, which the State review appraiser noted would result in a total value of no more than \$62,400 for the 24 acre parcel restricted to agricultural use. The review appraiser noted that this figure was unreasonably low in light of the fact that the size of the tract lends itself in this upscale neighborhood to an estate type market with a significantly higher per acre “after” figure.<sup>83</sup> The property, however, already contained a residence and no additional acreage was being excepted from the sale.

#### **Mercer County - Stuart Country Day School Property**

This transaction, the first easement sale in Mercer County, was selected for review because the owner is not a farmer and because of the high cost of the easement. The per acre price paid for an easement on this property, \$18,700 per acre, was the highest in Mercer County. It should be noted that the facts are somewhat complicated.

In 1977, Ann Townsend acquired approximately 59 acres<sup>84</sup> in northern Hopewell Township for \$125,000. The property was bounded on the west by the Bound Brook Railway, on the north by the Hopewell Valley Golf Club, by the Stony Brook Millstone Watershed

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<sup>83</sup> That is, the market value of the property after use of the acreage surrounding the house is restricted to agriculture rather than available for further development.

<sup>84</sup> Block 37, lot 23.01.

Association on the east, with frontage to the south on Titus Mill Road. The property was assessed as farmland, was used to grow hay at the time of acquisition, and is configured in an inverted “Y” shape, with the Y’s tail adjoining the golf club.

In April 1987, John Hart purchased the contiguous 15 acres<sup>85</sup> between the uprights of the “Y,” with frontage on Titus Mill Road. The Hart property was a single parcel of land containing one single family residence. The property was open cropland devoted to hay production.

In December 1987, Townsend entered an agreement providing the Mercer CADB an option to purchase the development rights to the 59 acres for \$20,000 per acre. Thereafter, in March 1989, Townsend gave the 59 acres as a gift to the Stuart Country Day School of the Sacred Heart. In April 1990, Stuart Country Day School sold the development rights on the 59 acres to the Mercer CADB and then sold the land, restricted to agricultural use, to Hart. Hart, in turn, sold the development rights on his own 15 acre parcel to the CADB.

This property was the first in Mercer County to sell its development rights and, as a result, no comparable development rights sales in the county were available. Both parcels were considered jointly by the SADC, since they were contiguous, although the parcels were owned independently. The property was adjacent to the 500-acre deed restricted Stony Brook Millstone Watershed Association, as well as the golf course, which was not deed restricted at that time.

There are a variety of soil types, with approximately 36% prime soils. The 59 acres belonging to the Stuart Country Day School were placed into the Farmland Preservation Program in 1990 at a cost of \$18,700 per acre. Its market value was estimated at \$22,000 per acre and its agricultural value at \$3,300 per acre.

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<sup>85</sup> Block 37, lot 23.

## **Middlesex County - Giamarese Farm**

An easement purchase on the Giamarese Farm in East Brunswick, at \$34,800 per acre, is the costliest easement purchase approved by the SADC to date. It was approved for funding in the SADC's 2000B funding round and subsequently approved by the GSPT. Although in accord with the value estimates by the county level appraisers, the file does not appear to sufficiently demonstrate the reason for the high easement value determined for the Giamarese Farm. The high value, however, is substantially less than the township of East Brunswick paid to directly purchase a development easement on the Giamarese Farm – \$48,106 per acre.<sup>86</sup> Thus, the township, as contract purchaser of the development easement, was the applicant to the Farmland Preservation Program, seeking reimbursement from the SADC for its expenditure.

The Giamarese Farm was previously the subject of an application to the program in the 1997 funding round. At that time, an easement value of \$13,500 per acre was certified by the SADC. Although the owners agreed to a discounted easement price of \$13,300 per acre, the farm received a final SADC ranking of 65, and only the top 56 farms received funding.<sup>87</sup>

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<sup>86</sup> An article in the March 12, 2001, *Home News Tribune* stated that East Brunswick Township officials, having approved a resolution to accept more than \$900,000 from the State and county as reimbursement for the Giamarese purchase, are now seeking to purchase 39 acres of farmland from Bruno and Clara Lapinski at a cost of \$7.8 million. This would amount to a price of \$200,000 per acre for the Lapinski property. The Lapinskis sued the township and its planning board in March 1999 because they wished to sell their land for development.

<sup>87</sup> Despite the Giamarese Farm's certified easement value, easement prices in Middlesex County appear to have been relatively stable. Three farms from Middlesex County were approved for easement purchase in the 1998 funding round, at \$6,500, \$6,750 and \$7,250 per acre. An additional Middlesex County farm received approval for funding in the 1999 round at a certified easement value of \$5,750 per acre. Four county farms were approved in the 2000A funding round, at certified easement values ranging from \$5,875 per acre to \$13,000 per acre. The Giamarese Farm was the only county applicant in the 2000B funding round and the first applicant to the program from East Brunswick Township.

The Giamarese Farm has been in the Giamarese family since the mid-1940s. In 1956, it was owned by Vincent Giamarese, a widower, and his three sons and their wives. In February of that year, the farm was transferred by all to one of the sons, Nicholas Giamarese, and his wife Helen, with the condition that the elder Giamarese retain the right to live there without cost for the remainder of his life. In June 1987, Helen Giamarese, then a widow, conveyed 20 acres, including a one acre lot containing a residence, of the Giamarese Farm to James Giamarese and his wife Susan for \$126,501. The Giamarese Farm is operated as a “pick-your-own” fruit and vegetable farm, and is popular with local residents. The owners also seasonally sell Christmas trees and firewood and offer pony and hay rides.

The application to the program consisted of most of the 20 acres of the farm owned by James and Susan Giamarese as well as that portion of the farm still owned by Helen Giamarese. Helen Giamarese owned approximately 17 acres, including an acre lot containing a residence. Two acres, containing one residence, a barn and a greenhouse, were to be excepted from the easement sale.<sup>88</sup> The land total to be restricted by a development easement was approximately 35 acres, and included the land on which one residence was located.

The farm is located in a rural preservation zone which allows clustering but has a bulk density requirement of two acres per lot. The parcel is slightly irregular but essentially in the shape of a long rectangle along Fresh Ponds Road. While the tract thus has substantial frontage, a long, large area of wetlands (39% of the property) runs parallel to the roadway, precluding

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<sup>88</sup> A subdivision of the two acres containing this second residence and other buildings was approved by the township after the application was made. Accordingly, these two acres, because they had already been divided off from the remainder of the parcel by the town and therefore were on a lot distinct from those affected by the easement sale, were not in fact excepted from the easement sale.

access to the upland acreage at the rear, except at the northerly end of the parcel via a strip of land only about 200 to 300 feet in width. Thus, the benefits of substantial frontage are essentially negated by the positioning of the wetlands on the property.<sup>89</sup> This fact was not considered by the appraisers who found that the site had favorable frontage in comparison to land in other sales.

Both county level appraisers mistakenly understood the property to have no wetlands, apparently each independently failing to recognize the effect on development of 39% “modified agricultural wetlands.” The appraisers’ conclusions of value were based on this mutual error, as revealed in both the text of their appraisals and in the grids each constructed, in their process of reaching value estimates, showing comparisons with other sales.

The soils are 89% prime for agricultural purposes and 94% of the cropland is harvested. However, the soils are 100% severe for septic development and the property does not have access to public sewers. One appraiser observed correctly that a key factor in assessing the unrestricted market value of a property is the percentage of soils rated “severe” for septic purposes, because the soil rating “can significantly impact the cost and the possibility of installing septic systems.” The appraiser then stated his erroneous information that 85.7% of the soils on the Giamarese Farm had only slight limitations for septic purposes. Thus, the appraiser concluded that the soils on the property were conducive to on-site septic systems and, accordingly, expressed his opinion that, based on these soil ratings, the property had fair soil characteristics for development.

When the State review appraiser later pointed out the appraiser’s error, the appraiser

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<sup>89</sup> The wetlands have been modified for agricultural purposes and the owners are permitted to maintain that usage, but the land is considered wetlands for other purposes. Thus, development, including road construction for access to the uplands area in the back of the farm, is precluded without special permits.

submitted a revised appraisal page. The revised page still noted the importance of soil ratings to development value, and now correctly stated that the soils on the property were 100% severe for septic purposes and therefore *not* conducive for development. The appraiser's conclusion that the property had fair development potential was not altered, however, and the appraiser now added that "septic systems may be constructed at added cost to a developer." When the costs of development increase, the development value of land ordinarily decreases. The appraiser, however, did not adjust his value conclusions which had been reached on an erroneous basis, even though he clearly understood that the 100% severe septic limitations of the property would result in higher costs to develop the land.

The State review appraiser is essentially confined to a choice of certifying an easement value within the range of values established by the county level appraisers, or rejecting the appraisals and, hence, the application. As discussed in the body of the OIG Report, the only basis for the SADC to reject the appraisals is to find that they failed to comply with professional standards or with the State appraisal handbook.

#### **Middlesex County - Stults Farm**

The 91 acre Stults Farm, preserved in 1990 at a per acre price of \$22,000, was part of the 1989 funding round. The owner is a member of the Middlesex CADB, and the easement purchase is discussed in the first section of this Appendix.

#### **Monmouth County - The George J. Dittmar, Jr., 1996 Irrevocable Trust Property**

This purchase of a development easement on this property, located on Montrose Road, was the second highest per acre easement price paid in Monmouth County through October

2000.<sup>90</sup> Dittmar, now in his 80s and the owner of Duck Hollow Farm, is a former member of the local Planning Board and has long been an advocate of limiting development.

This Colts Neck Township property was preserved in 1999. Preservation of the 191 acres cost \$13,482 per acre. The SADC found the unrestricted market value of the property to be \$21,500 per acre and its value restricted to agriculture to be \$4,600 per acre. Thus, the SADC certified the value of a development easement on this property to be \$16,900 per acre.

The gross area of the preserved property is 196 acres situated on two non-contiguous tracts. There are two one-acre exceptions. The SADC noted the utilization of both exceptions, each being on a separate tract, would be attractive to the “estate market.” The property is being used as a nursery. It has slightly less than 14% wetlands.

#### **Monmouth County - Quiet Winter Farm, Inc.**

The price paid for an easement on this property was \$16,160 per acre, the highest in Monmouth County through October 2000. The property was submitted during the 1997 funding round.

The property, owned by Carol and Willard Thompson, is irregularly shaped, gently rolling land used as a horse farm. The soils are 83% prime. There are approximately 10% wetlands and the land is 92% severe for septic drainage. Zoning in this area of Colts Neck is ten acres residential, and services are electric and telephone, but not public sewers or water. There were two dwellings on the property and several outbuildings.

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<sup>90</sup> The Dittmars operate the Dittmar Agency in Freehold Township, which deals in real estate.



The property was deemed to have a market value of \$25,000 per acre, an agriculture value of \$4,800 per acre, with a resulting certified easement value of \$20,200 per acre. The owners discounted the easement price, accepting \$16,160 per acre. The SADC's review indicated the property's market would likely be restricted due to its apparent appeal to an estate-type buyer.

### **Morris County - Farrand Farm**

The Farrand family owns approximately 346 acres<sup>91</sup> on West Mill Road and Turtleback Road in Washington Township which is currently being used to grow corn and soybeans.<sup>92</sup> The family has placed approximately 219 acres of their farm into the Farmland Preservation Program, receiving in return almost \$3.5 million dollars. The land was preserved in four separate tracts, with three of those tracts valued at the upper end of easement prices in Morris County.

On June 23, 1989, Harold O., Daniel O. and Janet Lynn Farrand received \$19,000 per acre for 59 acres of their Washington Township Farm.<sup>93</sup> The soils on the tract were primarily prime for agricultural purposes. Approximately four acres were wooded and the remaining 55 acres were tillable. On site septic and water were required. Zoning requires a minimum three acre lot. The area of the tract was described as rural in character with scattered development. The county level appraisals on this tract differed significantly. One appraiser estimated the unrestricted market value of the property to be \$22,000 per acre and the other \$14,000 per acre.

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<sup>91</sup> The Farrands own Block 33, lots 68, 68.01, 68.02, 69.02, 70, 70.01, 70.02 and 70.03; Block 34, lot 39; Block 55, lots 6, 8, 20 and 28, all in Washington Township.

<sup>92</sup> Harold O. Farrand is 81 years old and, with his wife Helen, has farmed in Long Valley, Washington Township, since the 1960s. His son Daniel, along with his wife Janet, now operates the family farm, and both couples live on the farm.

<sup>93</sup> Block 55, lot 20.

The appraisers estimated similar values of the property restricted to agriculture – \$3,000 and \$3,200 per acre, respectively. Thus, the value of a development easement on the property was estimated to be worth between \$19,000 and \$10,800 per acre.

On July 11, 1989, Harold O. and Helen R. Farrand received \$18,931 per acre for 77 acres of the farm.<sup>94</sup> The majority of this tract was located in an area of minimal flooding. The Farrands had installed drains in the lower portion of the site to prevent flooding and improve drainage. The area required on site septic systems and wells. The soils were mainly prime. The first appraisal estimated the “before” value of the tract to be \$22,000 per acre, the “after” value to be \$3,000 per acre and, thus, the value of a development easement on the property to be \$19,000 per acre. The second appraisal estimated the unrestricted market value to be \$14,000 per acre, the agricultural value to be \$3,200 and the resulting easement value to be \$10,800 per acre. The State review appraiser found the easement value to be \$19,000 per acre.

Also on July 11, 1989, Daniel O. and Janet Lynn Farrand received \$16,313 per acre for 26 acres of the farm.<sup>95</sup> On October 18, 1988, the SADC had approved a certified easement value of \$17,000 per acre for this portion of the Farrand farm, operated at that time as the Harbe Dan Farm. A three acre exception had been excepted from the sale of this easement.

On February 25, 1994, the Farrands purchased an additional 59 acres of land for \$650,000 (approximately \$11,017 per acre) and, on July 17, 1998, Harold and Janet Farrand received

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<sup>94</sup> Block 55, lots 6, 8 and 28.

<sup>95</sup> Block 33, lot 70.

\$8,360 per acre for an easement on 57 acres of this tract.<sup>96</sup> The property is a crop farm close to some development in a desirable section of Washington Township. The soils are rated moderate to severe for septic development and are considered 100% prime. The frontage of the property is described as reasonably good, the zoning is three acre minimum. On site septic and water are required. A one acre exception was made to the easement sale for the future construction of a residence.

### **Morris County - Lowensteiner Property**

The SADC certified a development easement value for this 53 acre parcel<sup>97</sup> of \$26,200, far more than the average \$10,184 per acre price paid for Morris County easement acquisitions. The tract was owned by Howard and Marvin Lowensteiner, who do business as H&M Farms, Inc., and sell lots developed from farmland.<sup>98</sup> About half of the parcel was open farmland and the remainder was wooded. Approximately 34% of the parcel was designated wetlands. Sewer and water service are not available to the site, and approximately 50% of the soils are rated severe for septic suitability. Of the tillable soils, only about 25% was harvested, although 71% of the property consisted of prime soils. Review of the file does not disclose the reason that the easement value was far higher than the average but does provide some relevant information. Both appraisals discuss an option to purchase the subject site for approximately \$4,000,000, contingent on obtaining a zoning change to allow townhouse units and increase the density of the

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<sup>96</sup> This property is Block 34, lot 39 in Washington Township. A one acre exception to the easement was taken. According to the SADC survey of the property, the property subject to the easement was 56.846 acres.

<sup>97</sup> Block 5, lots 2 and 10.02.

<sup>98</sup> It appears that the Lowensteiners currently do business as M H Farms, LLC.

single family lots, currently two acre zoning. The appraisers concluded, respectively, that the market value of the parcel was \$28,000 and \$40,000 per acre. The review appraiser found the \$40,000 per acre appraisal did not use comparable sales, but rather used greater density sales and sales which already had residential approval, including roads and water and sewer available, and selected \$28,000 as the market value. A lower agricultural value of \$1,800 was also selected because the restricted parcel would not permit the construction of a dwelling and because approximately 34% of the property was located within a designated wetland. The certified development easement value of \$26,200 was discounted to \$23,318 for the 1999 closing on the sale.

Regarding the high valuation of this property in relation to other properties preserved in Morris County, it is noted that the parcel was in Chester Borough and, indeed, is the only preserved land in Chester Borough, although one 185 acre farm has been preserved in Chester Township at an easement price of \$4,178 per acre. Almost all of the farmland preserved by the Morris CADB has been in Washington Township. It appears that the threat of high density development in an upscale area may have contributed to an interest in preserving this land.

#### **Ocean County - Hallock U-Pick Farm Ltd.**

The 138 acre Hallock “pick your own” farm was preserved in 1991 at a per acre easement price of \$6,300. This property belongs to a member of the Ocean CADB, and the easement sale is discussed in the first section of this Appendix.

#### **Salem County - Paulding Property**

Harry Paulding, Jr., and Edwin R. Paulding, with their respective wives as tenants by the entirety, conveyed a development easement on 207 acres in Pilesgrove on September 16, 1992.

The property had 1330 feet of road frontage. Prime soils comprised 49% of the property.

Approximately 17% of the property was wetlands or subject to flooding.

The SADC certified easement value for the property was \$3,000 per acre. The SADC found that the unrestricted market value of the land was \$4,000 per acre and the value restricted to agriculture was \$1,000 per acre. The owners discounted the easement price to \$2,930 at closing on the easement sale. The average price paid for an easement in Salem County through October 2000 is \$1,789 per acre. The price paid for the Paulding property is the highest in the county through October 2000.

#### **Somerset County - Summerskill Property**

At \$19,846 per acre, the price paid to place a development easement on the 30 acre Summerskill property,<sup>99</sup> located on Harlingen Road in Montgomery Township, is the highest in Somerset County through October 2000. The land is primarily used as a vineyard and winery and operates under the business name Lafollette Vineyard & Winery, Inc. Richard Lafollette, William Urquhart, Niki Wright and Miriam L. Summerskill all appear to share ownership of the property.

The two county level appraisers found the unrestricted market value of the property to be \$30,000 and \$31,500 per acre. The appraisers, however, differed notably in their assessment of the value of this property restricted to agriculture. One appraiser found the agricultural value of the tract to be \$3,000 per acre and the other found the agricultural value to be \$10,000 per acre. Thus, the easement values determined by the appraisers ranged from \$27,000 per acre to \$21,000

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<sup>99</sup> Block 6001, lot 37.

per acre. The SADC review appraiser concluded that the property had a per acre “before” value of \$30,000, an “after” value of \$3,000, and a per acre easement value of \$27,000.

### **Sussex County - Kirby Farm**

The second highest price paid through October 2000 for a development easement in Sussex County was \$5,907 per acre for the Kirby Farm, located in Andover/Green Townships.<sup>100</sup> Closing on the easement sale took place in September 1989. The 74 acre farm is owned by Coray S. Kirby and is referred to as the Florence Minifie Farm.

The easement values of the property determined by the two county level appraisers vary significantly. The first appraisal determined the per acre unrestricted market value of the property to be \$9,000 and the “after” value to be \$3,000, with a resulting per acre easement value of \$6,000. The second appraisal report determined a per acre “before” value of \$5,600, an “after” value of \$2,100, yielding a per acre easement value of \$3,500. Based on the two appraisal reports, the SADC review appraiser concluded that the property had a per acre market value of \$9,000, a value restricted to agricultural use of \$3,000 per acre, and a per acre easement value of \$6,000.

The property encompasses five tax parcels in two townships and has extensive frontage on both sides of Burlington Road. Topography of the property is described as generally level to gently rolling. Approximately 75% acres of the soils are prime agricultural soils with the balance being wet areas. The periphery of the property to the south, east and west tend to be swampy by virtue of the Pequest River and its tributary. Improvements on the property include a two-story

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<sup>100</sup> Block 22, lots 19 and 21; Block 25, lot 3 (Green Township). Block 157, lot 1; Block 161, lot 2 (Andover Township).

main dwelling, tenant house, and several older, wood, outbuildings. The property was formerly a dairy farm, but was being used to produce hay at the time of the appraisal.

### **Sussex County - New Jersey Conservation Foundation**

Property owned by the New Jersey Conservation Foundation was placed into the Farmland Preservation Program in 1991. The cost was \$6,410 per acre for 47 acres. This is the highest per acre price paid for a development easement in Sussex County. This followed the SADC's certification of a development easement value of \$6,500 per acre for the tract. The unrestricted market value was estimated to be \$9,500 per acre, while the agricultural value was estimated at \$3,000 per acre.

The farm is a rectangular property, generally level to gently rolling. It has about 74% prime agricultural soils. Part of the property is swampy because of the Pequest River. It is located in Andover Township and is situated on a single tax parcel. Its gross area is approximately 50 acres. Improvements include a two-story main dwelling, two tenant houses, a large former dairy barn and smaller auxiliary structures. While the property was formerly a dairy farm, its primary use had switched to hay production at the time it was evaluated for the Farmland Preservation Program.

It is noteworthy that most farms preserved in Sussex County are in Wantage Township. The property submitted to the program by the NJCF is located in Andover Township. The Kirby property, the second most expensive per acre easement cost in Sussex County, is located in both Andover and Green Townships. Thus, it appears that the location of these tracts may have contributed to their higher value.





## Warren County - Caputo Property

The highest per acre easement price in Warren County was for the Caputo property on Cemetery Hill Road in Washington Township.<sup>101</sup> The owners of the property, Joseph Caputo Living Trust (Joseph Caputo, Trustee) and Aldo Caputo, are developers.<sup>102</sup> While the average per acre easement cost in Warren County is \$3,808, the price paid to preserve an easement on the 147 acre parcel Caputo property was \$11,381 per acre.<sup>103</sup>

A development easement on the Caputo property was sold to the Farmland Preservation Program in 1991. Prime soils comprised 94% of the property and it contained no wetlands. Part of the tract was being tilled by a tenant farmer and the remainder had been left as pasture. The area was zoned for residential development on 1.8 acre lots. In 1988, the property had been granted preliminary approval for 67 lots as Valley View Estates. The front 40 lots had since obtained final approval, yet none of the lots had been sold, although the property had been on the market for over two years. No structural improvements had been made.

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<sup>101</sup> Block 71, lot 3.

<sup>102</sup> Joseph and Aldo Caputo were plaintiffs against Chester Township in Morris County in the *Mount Laurel II* case. See 92 N.J. 158, 308 (1983). In that case, the Caputos had sought an order that rural Chester Township be rezoned to accommodate the Caputos' plan to build multi-family units (a builder's remedy).

<sup>103</sup> During fiscal year 1992, when a development easement on the Caputo property was purchased by the Farmland Preservation Program, the average per acre easement price in Warren County was \$6,347. There were three other Warren County farms on which easements were purchased during the 1992 fiscal year. All three were in Franklin Township and easements were purchased on those properties, respectively, for \$5,131 per acre (Schnetzer), \$5,400 per acre (Leyburn) and \$3,467 per acre (Steinhardt). Over the years, easements on two other farms in Washington Township, Warren County, have been purchased – one in fiscal year 2000 for \$3,079 per acre (SADC/Blazier), and the other in fiscal year 1994 for \$4,195 per acre (Jelliffe).

The appraisals based the market value on the then existing plan for 67 building lots. The appraisals used as comparables other land approved for subdivision and sold between April 1987 and November 1989. The appraisers estimated the unrestricted market value of the land to be between \$15,217 per acre and \$23,056 per acre. In light of the risky market conditions as of the valuation dates (which one may infer led to the sale of an easement to the Farmland Preservation Program rather than to development of this land), the State review appraiser accepted a market value of \$15,217 per acre. The appraisers respectively found the property restricted to agricultural use to be worth \$3,000 and \$3,500 per acre, respectively. The State review appraiser found the restricted value of the land to be \$3,000 per acre<sup>104</sup> and an easement value of \$12,217 per acre was certified, the difference between the fair market value and the restricted value of the property. The Caputos discounted the price to \$11,381 per acre.

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<sup>104</sup> On August 31, 1998, the Caputos sold the preserved farmland for \$330,000 (approximately \$2,245 per acre).

### **Section III: Other Easement Acquisitions**

In this section of the Appendix, additional easement sales are reviewed. Some of these sales were selected because they have received public criticism. In some, criticism of the quality of the purchase was made, including allegations that the property contained substantial wetlands or severe soils which would limit its development and, hence, its development value. In a couple of other cases, members of the public had complained about ostentatious estate residences being constructed in the midst of preserved land. Some others transactions reviewed were sales of development easements by what appeared to be business entities, and OIG attempted to ascertain whether the owner were a CADB member, a land speculator or a farmer.<sup>105</sup> In a few transactions, the owner was a private educational institution. In several of these latter cases, the institution had obtained the property through gift or bequest and had placed a development easement on it before selling it.

Each of the immediately following six farms was criticized as containing substantial amounts of undevelopable wetlands or severe soils. While current DEP wetlands mapping now

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<sup>105</sup> According to the Department of Agriculture, approximately 53% of New Jersey's farmland is owned by non-farmers. OIG has independently ascertained through its review that a notable portion of the land currently being farmed in New Jersey is already owned by land speculators. Indeed, in several instances, while reviewing the area of a preserved farm, OIG noted that surrounding acreage was rented to farmers and was owned by an offsite business entity. To reach its goals of preserving 500,000 acres of farmland, that land already in the hands of land speculators and developers must be included for easement purchase. Land speculators are able to hold land for substantial periods of time because they rent it in the interim to tenant farmers, and thus receive the benefits of the lower tax assessment for farmland. When land is eventually sold for development, a "roll back" tax must be paid. Such a tax essentially serves to recoup the difference between the ordinary assessment for vacant land and the lower assessment for farmland. In New Jersey, when land is sold for development, roll back taxes are due for the current year and two preceding years. In some states a longer period for roll back taxes is imposed, which diminishes the incentive of land speculators to hold land for development. OIG did not take a position on New Jersey's tax laws in the Report or this Appendix.

indicates that the land of each contained substantial wetlands, that mapping was not available at the time these farms were appraised.

# **1. Burlington County - Bishop Farm**

This 935 acre farm, located in both Mansfield and Springfield Townships, was placed into the Farmland Preservation Program in 1989 by John Bishop VI at a price of \$2,953 per acre. Approximately seven acres were excepted from the sale. Four residual dwelling site opportunities were maintained, at two acres each.

The property was comprised of several tax parcels.<sup>106</sup> It was divided into three land masses by the existing road network. The property was located along Mount Pleasant Road and Skunk Island Road. Soils were 52% prime. Approximately 40% of the site was in woods, wetlands or a flood plain. The property contained a large two and one-half story residence, in good condition, and an older, generally obsolete dairy complex. Other improvements, including several tenant houses, were situated within the exceptions.

In estimating market value of the property, the first county level appraiser used data from real estate sales which had occurred between February 1985 and September 1987, and the second used data from sales which closed from February 1985 and some which were pending at the time of appraisal. The appraisals were both creative and detailed in their scenarios of development possibilities. The first appraiser suggested that, because of the large size of the property, it could be developed with the creation of its own sewer system to service the developer's lots. The

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<sup>106</sup> According to SADC records, an easement was purchased on Block 22, lot 7.01; Block 23, lots 1.02, 1.03, 5.04, 13 and 22.01; Block 24, lot 36.01, all in Mansfield Township, and Block 1501, lot 18 in Springfield Township. Block 23, lots 1.03 and 5.04 have since that time been merged into Block 23, lot 1.02.

appraiser further suggested that an area of the property could remain in farming in order that the treated sewerage effluent could be sprayed on it through an irrigation system, thus managing the issue of disposal of the sewage. The first appraiser estimated the unrestricted market value of the property to be \$3,991 per acre; the second appraiser estimated that value as \$3,683 per acre.

The county level appraisers differed in their opinions of the value of the property restricted to agriculture, with one suggesting a value of \$1,418 per acre and the other \$925 per acre. Thus, the county level appraisers estimated the value of a development easement to be, respectively, \$2,573 and \$2,758 per acre. The State review appraiser, who made a field inspection of the property, concluded that the substantial areas of freshwater wetlands, flood plain and woodland, or otherwise untilled ground, would result in an agricultural value in the lower half of the range indicated by the appraisers, and estimated the “after” value of the property to be \$1,100 per acre. The review appraiser estimated the “before” value to be \$3,991 per acre, and determined the value of an easement to be \$2,891 per acre.

John Bishop VI still owns most of the farm (Block 23, lots 1.02, 13 and 22.01). The Dong family owns approximately 388 acres, which include improvements assessed at \$635,100 (Block 22, lot 7.01). The 82 acres of the farm which were located on Mt. Pleasant Road in Springfield Township (Block 1501, lot 18) are now owned by Zion Farms. Another 29 acres on Island Road are owned by the Ciacciarelli family (Block 24, lot 36.01).

## **2. Burlington County - Grossman Farm**

The 47 acre Grossman Farm,<sup>107</sup> located in Chesterfield Township, was preserved in 1989. The cost of placing a development easement on the farm was \$4,053 per acre.

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<sup>107</sup> Block 901, lot 6.02.

This farm was used to produce various field crops. The property was comprised of 54% prime soil. Wetland areas of approximately 10% were noted by one appraiser, as was a high water table in other areas of the property. At the time of the appraisals, however, the DEP had not yet completed its wetlands mapping of Burlington County. When the original 50 acre parcel was appraised, it was noted that the land contained no improvements. The Grossmans excepted out approximately three acres before sale of the development easement. It appears that this exception was taken in order to construct a house and surrounding improvements. The SADC file reviewed did not contain information on the construction which eventually occurred and OIG did not conduct a field inspection of this property. Nevertheless, tax records indicate that the parcel currently contains a one acre area of improvements assessed, separately from the 49 acres of farmland, at \$226,200.

One appraiser noted, in discussing the development value of the land, that a significant trend in Chesterfield Township was for farmers to sell two to five acre tracts along the road frontage for individual custom homes or small subdivisions of four or five houses. The review appraiser found the market value of the property to be \$6,600 per acre, the value restricted to agriculture to be \$1,500 per acre. Accordingly, the easement value was certified to be \$5,100 per acre.

### **3. Burlington County - Homa Farm**

The 92 acre Homa Farm,<sup>108</sup> located in Chesterfield Township, was appraised in 1989, before the Department of Environmental Protection completed its wetlands mapping of Burlington County. The cost of the development easement on this property was \$7,271 per acre.

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<sup>108</sup> Currently Block 501, lot 1.10.

At the time of its appraisal, no note was made of the wetlands composition on the property. The appraisals did note that the farm contained almost 90% prime soil, had almost 2,000 feet of frontage and had a high percentage of tillable land. The farm was used to produce various field crops.

The appraisals used comparable sales in Chesterfield Township, and the review appraisal noted that the region remains a prime area for development. The two appraisals submitted by the county estimated the market value of the land as \$8,972 and \$9,272 per acre and the restricted agricultural value, respectively at \$2,000 and \$1,976 per acre, resulting in their estimating easement values of \$6,972 and \$7,296 per acre. The State review appraiser concluded that the market value was \$9,272, the agricultural value was \$2,000 and certified the value of the development easement as \$7,272 per acre.

#### **4. Burlington County - McDaniel Farm**

The 234 acre McDaniel property,<sup>109</sup> located in Springfield Township, was a dairy farm, with 22% prime soils, residential zoning and 20% wetlands or flood plain. The farm was preserved in 1990 at a cost of \$4,462 per acre to impose a development easement.

Virtually the entire property, 98% is rated moderate to severe for septic capability. As noted through the appraisals, areas prone to wetlands were evident throughout the middle of the property and toward the rear, although no wetlands or floodzones appear on federal maps. At the time of the appraisals in 1989, the DEP had not yet completed its wetlands mapping of Burlington County. The cropland was concentrated toward the center and southerly corner of the property on somewhat higher ground. The two appraisers estimated the market value of the farm

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<sup>109</sup> Block 1401, lot 17.01.

at \$6,000 and \$10,600 per acre, and the review appraiser found the market value to be \$6,000.

The review appraiser found the value restricted to agriculture to be \$1,500, and thus certified an easement value of \$4,500 per acre. This application received CADB approval in February 1988 and, at that time, the CADB authorized the applicant to replace the house on the premises.<sup>110</sup>

When reviewed by the SADC, the property contained the foundation of the house which had been torn down since the preliminary review by the CADB. Only two residential units existed on the property.

## **5. Burlington County - Rue Farm**

This property, located in Springfield Township, was also included in the 1989 funding round. A development easement was purchased in 1990 on 163 acres, at a price of \$6,188 per acre. The easement purchase was funded entirely by the county. Almost 13 acres of the entire farm were to be excepted from the easement sale.

The property was a former dairy farm, which contained a residence and several barns and sheds. The property was comprised of two land masses, the smaller parcel of approximately five acres and the balance to the north of Arneys Mount Road. Approximately 50% of this property was wetlands or located within a flood zone. The DEP had not at the time of this application completed its wetlands mapping of Burlington County. The property was not generally conducive to septic development, since 94% of the property was rated severe to moderate. The larger land mass abutted a small airport. The soils on the property were 40% prime.

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<sup>110</sup> Had the board not done so before the easement was imposed, the easement would have precluded the new construction.



The county level appraisers estimated the market value of this property at \$7,200 and \$9,633 per acre and its value restricted to agriculture to be \$2,000 and \$1,300 per acre, respectively. Thus, the two appraisals estimated a range of value for a development easement of \$5,200 to \$8,333 per acre. The State review appraiser estimated the “before” value to be \$7,764 per acre, the “after” value to be \$1,700 per acre and thus the value of a development easement on the property to be \$6,064 per acre.

In April 1992, the preserved property was sold for \$401,075 to Stanley J. Sliwinski, M.D., of West Trenton. In November 1999, Sliwinski in turn sold the property to a Pennsylvania couple for \$538,000.

#### **6. Burlington County - Van Mater Farm**

During the 1989 funding round, a development easement was purchased on the 77 acre Van Mater property in Mansfield Township<sup>111</sup> for \$4,002 per acre. The property is still owned and operated by Charles H. Van Mater.

The property, which encompasses one tax parcel, fronts on the north side of Mt. Pleasant Road for approximately 975 linear feet. Thus, frontage is somewhat limited. Soils are 88% prime. There are no building improvements. Although this property appears to contain substantial wetlands, the application to sell an easement to the Farmland Preservation Program was made in 1989, before the DEP had completed wetlands mapping of Burlington County. One county level appraiser, in evaluating the unrestricted market value of the property, factored in the possibility that the development of a major subdivision to the north of this property might

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<sup>111</sup> Block 23, lot 9.01.

provide it sewer service. The major subdivision has since been constructed by K. Hovnanian, Inc. and in fact constructed its own sewer system.

The county level appraisers estimated the market value of the Van Mater property to be \$4,340 and \$5,326 per acre. They estimated the value of the property restricted to agriculture to be, respectively, \$1,400 and \$1,541 per acre, resulting in easement values of \$2,940 and \$3,785. The State review appraiser estimated the “before” value to be \$5,669 per acre, the “after” value to be \$1,558 per acre, and the resulting development easement value to be \$4,111 per acre.

**Burlington County - Crescent Farms, Inc.**

The easement purchase on this property and that of several of the following properties were reviewed because the owner submitting the property to the Farmland Preservation Program was a business entity. This 185 acre farm was found to contain 43% prime soils and a rather substantial area of flood zone. It was being used to produce various field crops. An additional ten acres was included in the purchase after the original appraisals. This additional acreage was good quality, with substantial frontage and, by virtue of its hilltop location, well drained with significant development potential.

The comparable fair market sales were taken from Springfield and Mansfield Townships, and the appraisers estimated the market value of this land to be \$4,049 and \$5,857, with the value restricted to agriculture to be \$1,500 and \$1,406 per acre, respectively. The appraisals estimated the easement values at \$2,549 and \$4,451, and the State certified the easement value at \$3,900 per acre. The purchase of the development easement was consummated at \$4,131 per acre.

## **Burlington County – Crowshaw Farm**

The Crowshaw Farm, included in the 1994 funding round, consisted of 125 acres in Mansfield Township.<sup>112</sup> The property had been purchased for \$350,000 in 1986 by David W. Crowshaw and Sandra J. Cowen.<sup>113</sup> It was preserved through an easement purchase at a cost of approximately \$575,000 at a time when the real estate market was depressed. The purchase of a development easement on this property has been criticized because of the amount of wetlands and severe soils on the property.

Acquisition of the development easement to the Crowshaw farm was deemed important to Burlington County's farmland preservation efforts because the property completed a 1,300 acre project area, and it was felt that development of the Crowshaw farm would have negatively impacted the area. In 1994, the Crowshaw farm was the only non-preserved property in the vicinity. Seventy-five percent of the farm is tillable cropland, with 59% prime soil.

A site-specific wetlands mapping by Environmental Evaluation Group was commissioned by Burlington County. Approximately 35% of the property was found to be wetlands and wetlands buffers. Several ditches, classed as wetlands, cross the property at right angles. It was observed that the DEP wetlands mapping of the site was inaccurate in that it greatly exaggerated the actual wetland areas. Nevertheless, the northern two-thirds of the tract were viewed as having a restricted potential for development because of the intervening wetlands and the width of the wetland crossings. To develop the northern two-thirds of the site would require individual

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<sup>112</sup> Block 23, lot 12.01.

<sup>113</sup> The fee simple cost of the farm in 1986 was approximately \$2,800 per acre.

freshwater wetlands permits, which, according to the Environmental Evaluation Group, would be “very difficult” to obtain because alternative sites for development exist for housing in the area.<sup>114</sup>

One appraiser noted that there were few current buyers seeking land for development. He nevertheless stated that the site had “potential residential development for higher valued homes on large lots.” He recognized that “until such time as the market improves so as to make [such development financially feasible], the interim use of the [property] is as an agricultural production unit.” Despite the fact that the real estate market for development was depressed, this appraiser found the unrestricted market value of the site to be \$6,500 per acre (more than \$800,000 in total), the value of the land restricted to agricultural use to be \$1,850, and the resulting value of a development easement to be \$4,650 per acre.

The second appraiser found the unrestricted market value to be \$4,800 per acre, with the agricultural value to be \$2,300 per acre, and the resulting development easement value to be \$2,500 per acre. This appraiser noted that the current owners had purchased the property in November 1986 for \$350,000. His appraisal demonstrated a current value to the property of almost \$700,000, despite the depressed conditions of the real estate market. It is noteworthy that there was a substantial difference between the values ascribed to a development easement on the property by the two appraisers (\$2,500 vs. \$4,650 per acre).

The State review appraiser certified a development easement value of \$3,200 per acre. The seller, however, declined to accept the certified value and sought the maximum easement value set by the first county appraiser, \$4,650 per acre. Because the seller was requiring more

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<sup>114</sup> Despite these facts, it is noteworthy that the Croshaw property was rated number 12 in the State during the SADC’s initial quality ranking of the farm applicants.

than the State's certified easement value, the State's share of the cost of the easement purchase was reduced to less than 50%. The County of Burlington and the municipality paid the difference to preserve this land.

This property appears to have had little development value at the time it was purchased. First, the real estate market for developable properties was substantially depressed, as acknowledged in both county appraisals. Second, in the best of markets this property would have been far less than a desirable choice for development because of the necessity to obtain individual wetlands permits before being able to develop two-thirds of the property. The justification for purchasing an easement on this property appears to be that it completed a section of preservation which had been targeted by the county.

#### **Burlington County - Dreamaire Stud Farm**

The 257 preserved acres located in Chesterfield Township, which operates as a horse farm, was formerly a dairy farm. The farm is comprised of 84% prime soils and 10% wetlands. The review appraiser noted that the quality of this farm compared favorably both to other farms in the area and to other preserved farms. The market value was estimated at \$7,800 per acre, the value restricted to agriculture was estimated to be \$1,800 per acre, and the resulting development easement was certified at \$6,000 per acre.

Dreamaire Stud Farm is the operating name of G & B Farms, Inc. It appears that the business address of the company is in Neptune, Monmouth County. It further appears that several businesses operate from the Neptune address, including Strome Breeding Corp., G & B Farms, Inc., Dreamaire Stud and Solomon Standardbreds, Inc.

## **Burlington County - Goodenough Farm**

The purchase of the Mansfield Township Goodenough Farm in the 1997 funding round has been criticized because the farm contained approximately 55% wetlands and 61% severe soils, the latter of which would restrict development which was dependent on septic systems. At the time of the sale of the development easement, the 236 acre Goodenough Farm was an active dairy farm, with about 30% of the farm in active pasture and about 30% actively cultivated as a corn crop. The remainder of the property was covered with a moderate to dense growth of mature trees and underbrush. The property was bisected by a small, shallow branch of Craft's Creek, which flows from northeast to the southwest. Because approximately 61% of the soil had severe septic suitability limitations, and an additional 15% had moderate limitations, only about 24% of the tract was readily developable with septic systems. For farming purposes, 67% of the land on the farm was classified as prime.

Review of this purchase revealed that consideration of the effect of the soil and wetlands limitation was included and considered in assessing the land's development potential, and resulted in a reduction in the price per acre valuation of the property. The CADB obtained a freshwater wetlands delineation report prepared by the Environmental Evaluation Group in Toms River which demonstrated somewhat less areas of wetlands than does the wetlands mapping done by the Department of Environmental Protection.

Of the 236 acres on which a development easement was purchased, the property contained approximately 55% wetlands and buffers, with approximately 45% of the property potentially developable. The wetlands mapping commissioned by the county revealed that wetlands transected the property, cutting off approximately 30% of the upland area. However,

because the wetlands area narrowed to only about 100 feet in places, it was believed by the appraisers that the DEP would issue a permit for a road crossing, which would allow development in the southerly uplands area.

The appraisals noted that a K. Hovnanian housing development of 936 units was planned to the immediate south of the Goodenough Farm, which would be serviced by a public sewer system. The sewer system was to be sized to limit any significant additional development within the surrounding area, but the appraisers suggested that it may have been sufficient to extend to an area of single family homes on the Goodenough Farm. The appraisers noted that 71 homes could be built on the Goodenough Farm in accord with local zoning acreage, but that the wetlands areas limited development to 30 or 31 homes or, by utilizing cluster development, to approximately 49 lots. The appraisers noted that the area was not currently subject to substantial development pressure, but that there was at that time a limited but growing demand for single family residential development within the area.

Each independent appraiser conducted a direct sales comparison and found that the range of sale prices per acre was between \$4,002 and \$12,000, with the average between \$5,696 and \$6,877 per acre. The two appraisers adjusted the figures for such factors as wetlands, zoning, frontage, location and size and concluded, respectively, that the fair market value of the Goodenough Farm property was \$5,500 and \$6,000. The appraisers also concluded that the value of the land as a farm was \$1,800 and \$2,000 per acre, respectively. Thus, the two county level appraisers concluded that the value of development easements on the Goodenough Farm were \$3,700 and \$4,000 per acre. The State review appraiser found the value of the development easement to be \$3,700 per acre and certified that value. The development easement was actually

purchased at a discounted price of \$3,515 per acre. The appraisers indicated that they considered the farm's substantial wetlands and severe soils, yet found that the land to be restricted by development easement had the potential to support between 30 and 49 single family homes.

### **Burlington County - Haines Farm**

The Haines Farm, located in Southampton Township, is comprised of approximately 98.5 acres, containing 52% prime soil. OIG is informed that owners have no relationship to William Haines, who serves on the Burlington CADB. At the time the development easement was sold to the State, the site was an active crop farm with the yield consisting of soybeans, alfalfa and hay. It is located along Route 206, with part of the property (Block 602, Lot 7, 85.6 acres) in a rural residential zone and the remainder (Block 603, Lot 2, 11.4 acres) in a village commercial zone.

The CADB commissioned Killam Associates, Consulting Engineers, to conduct an on-site survey of the wetlands habitat on the Haines Farm and Killam's report was presented in September 1993. Killam disagreed with the DEP wetlands mapping of the farm, and found the uplands area to be approximately 40 acres, the wetland and buffer area to be about 21 acres and an area of former wetlands converted to farmland before 1985 to comprise another 37 acres.

One of the two independent appraisers found the soil limitations for purpose of septic construction on the west side of Route 206 (Block 602) would render the maximum area for development approximately 31 acres in the extreme southern end of the lot, together with approximately 10 acres from adjacent soil which would be used to provide rear yards. The appraiser also found that the area would require average three acre lots. Although the area is zoned for single family homes on individual lots of a least one acre, the appraiser noted that the soil would probably require minimum lot sizes of between two and three acres. The appraiser



noted that the land on the east side of Route 206, except for the wetlands area, did not present a problem for development, although a mound system would be needed. This appraiser estimated the market value of the land to be \$4,100 per acre, with the agricultural value estimated to be \$1,800. Thus, the appraiser found the easement value of the Haines Farm to be \$2,300 per acre.

The second appraiser determined that a total of 17 lots could be able to be developed on Block 602 and that three lots would remain available, after deducting for wetlands, on Block 603. Thus, the second appraiser estimated that the market value of the Haines Farm was \$6,469, with the value restricted as farmland to be \$2,600, thus presenting an easement value of \$3,869 per acre. The State review appraiser, found the market value of the land to be \$5,669, the farmland value to be \$1,800, and the resulting easement value to be \$3,869 per acre.

OIG's review of the Haines Farm sale indicates that it was a less desirable property than many, but that the limitations on development were evaluated and accounted for in the appraisals of the land. It is also noteworthy that more than half the farm contains prime soil and its restriction from development will assure that the soil remains available for farming in the future.

#### **Burlington County - Katona Farms, Inc.**

A development easement on this 182 acre parcel in Chesterfield Township was purchased in 1989 for \$7,977 per acre. The property contained 80% prime soils, with less than 5% wetlands. The land was mostly open farmland with minimal woodlands. The parcel encompassed two contiguous land masses being used to produce various field crops and located across the road from other lands owned and farmed by the Katonas. The appraisals considered the development value of the parcel, comparing both acreage sales and residential lot sales in

Chesterfield Township. The review appraiser selected both the lower market value estimate of \$9,990 and the lower restricted agricultural value of \$1,925 and certified the easement value as \$8,065 per acre. The ultimate purchase was slightly discounted to \$7,977 per acre. Walter M. Katona, the owner of Katona Farms, Inc., also preserved an additional 201 acres of his farmland through the program in 1990 at an easement price of \$7,223 per acre.

### **Burlington County - Rahilly Farm**

OIG selected this farm for evaluation because it had received no information criticizing this purchase and, thus, it appeared to be an appropriate choice against which to measure more controversial choices. The Rahilly Farm in Springfield Township contains two single family residences. The 107 acre farm is a crop farm with 72% prime soil, 20% wetlands and a power line easement. Approximately 15% of the property is woodland. A portion is zoned commercial.

The CADB commissioned an on-site wetlands mapping, prepared by Environmental Evaluation Group, which determined that the farm contained approximately 78 acres of uplands, 20 acres of wetlands, and approximately 10 acres of transition area. The report on wetlands indicated that the DEP mapping correctly showed the general location of wetland systems, but that the extent of wetlands was overestimated. The overestimation was found to be in the forested fringes of the stream corridors on the northwestern and western sides of the site. The DEP map indicated that some wetlands boundaries occur high on steep slopes above the stream channels, but in actuality the wetlands were much closer to the valley bottoms and did not rise up as far on the hill slopes as the DEP map suggested.

The two independent appraisers, respectively, found the fair market value of the tract to be \$6,400 and \$5,500 per acre. The agricultural value of the land was found to be \$2,300 and

\$2,000 per acre, with the value of development easements estimated at \$4,100 and \$3,500 per acre, respectively. The State review appraiser found the fair market value of the farm to be \$6,400 per acre and the agricultural value to be \$2,300 per acre. Thus, the State certified a value of \$4,100 per acre for the development easement for the Rahilly Farm. The development easement was actually purchased at a discounted price of \$4,000 per acre.

### **Burlington County - Shinn Farm**

The Shinn Farm<sup>115</sup> was included in the 1994 funding round. This Springfield Township farm is a crop farm with two residences. It was a dairy farm and has some old outbuildings. The farm consisted of 101 acres, of which 96% was tillable. The farm contained 41.5% prime soils and has excellent frontage. This section of Burlington County was noted to be developing slowly.

Critics of the purchase of the development easement on the Shinn Farm have charged that, because the land is comprised of substantial areas of wetlands and has a water table within two and a half feet of the surface, the property is unbuildable. The appraisal file, however, contains a wetlands mapping prepared by Environmental Evaluation Group which determines that the total area of wetlands on the Shinn tract is less than 10 acres, with another eight acres of transition area, based on a 50 foot buffer area. Thus, the report concludes that there are more than 80 acres of non-regulated uplands on this site. The on-site wetlands mapping concludes that the DEP mapping of the site is somewhat inaccurate. Significant inaccuracies were observed in the southeastern quadrant where the wetlands stopped near the property line and did not extend

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<sup>115</sup> OIG is advised that the owner of this farm is not related to the current Commissioner of the New Jersey Department of Environmental Protection, Robert Shinn.

into the field as shown on the DEP map. Also, the wetlands were somewhat more extensive than depicted by the DEP mapping along the southerly property line as they extended into the field. The ditch along the road is also a regulated wetland, but was not mapped by DEP. The report by Environmental Evaluation Group concludes that the wetlands “are not extensive on the tract and their configuration is amenable to developing the site with minimal impacts to the wetlands.”

#### **Burlington County - Winding Lane, Inc.**

The Winding Lane, Inc., property is a large horse farm with 66% prime soils, about 13% wetlands. The 521 acre property contains two residences and two residual dwelling site opportunities. Several new subdivisions are close by. The property was included in the 1995 easement purchase funding round. A portion of the property is on Sykesville Road in Chesterfield Township<sup>116</sup> and the larger portion is on Schoolhouse Road in North Hanover. The property to be preserved has limited frontage and includes a seven acre site containing a building. The tract also contains, although not included in the land subject to a development easement, a sand and gravel pit. Joseph Smylie, Sr., president of Winding Lane, Inc., now resides in Pennsylvania. The property appears to be currently operated by Joseph J. Smylie, Jr., who resides on Smylie Road in North Hanover and Jon J. Smylie, who lives on Sykesville Road.

#### **Cumberland County - Decou Hilltop Orchards, Inc.**

OIG reviewed this sale in Hopewell Township to determine if the owner were a land investor or a farmer. This 297 acre parcel was comprised of almost 80% prime soils and almost 7% unique soils. This property showed evidence of development pressure since it was located near a current development. The land was actively operated as an orchard, raising apples,

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<sup>116</sup> Block 1105, lots 16.01 and 16.03.

peaches, nectarines and berry crops. An easement value of \$2,300 per acre was certified by the SADC, somewhat higher than the county average of \$1,809, based in part on the excellent long term development potential of this farm.

#### **Cumberland County - Hopewell Nursery, Inc.**

In 1998, a development easement was placed on this 508 acre property, owned by Robert Ench, at a per acre cost of \$1,290.<sup>117</sup> The nursery is located on two non-contiguous parcels, one containing 81 acres and the other 422. The property is primarily located in Upper Deerfield Township and partially in Deerfield Township.

There are no dwellings, residual dwelling site opportunities, exceptions or easements on the property. The property does contain various barns, sheds, greenhouses and other farm buildings. The topography is somewhat rolling. The soils are 70% prime and 94% cropland. There are less than 6% wetlands and the property overall is well-drained.

#### **Cumberland County - E. Joyce & Son, Inc.**

E. Joyce & Son, Inc., owns various properties in Cape May, Cumberland and Salem Counties. Development easements were placed on adjacent portions of the Joyce property located in Cumberland and Salem Counties. These easement transactions are discussed below as a Salem County transaction.

#### **Gloucester County - Mae Partnership**

The Mae Partnership sold a development easement to the farmland preservation program on 317 acres of land. At the same time, the partnership excepted some 36 other acres from the

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<sup>117</sup> The easement value was certified at \$1,300 per acre. The owner did not offer a discount from the certified value. The submission, however, was evaluated on the basis of 503 acres. The actual survey demonstrated that the parcel contained 508 acres.

sale for the possible construction of a residential subdivision. The tract contained 54% prime soils and almost 80% of the cropland was harvested. The soils were rated good or fair for septic suitability. State wetlands mapping were unavailable for this property. A significant portion of the farm was woodland. A turnpike interchange was located three miles from the farm.

The CADB ranked this property as their top selection, granting the land an additional ten points in the statewide ranking. The SADC, however, deducted 10 points because the subdivision exception was viewed to have a substantial negative effect on agriculture. While this was the highest ranked farm by the CADB during the 1996 funding round, the land ranked 76 out of 89 in the State ranking.

#### **Gloucester County - Sorbello Estate Residence**

Fred Sorbello had obtained a small horse farm on Route 47 in South Harrison for \$235,000 (approximately \$4,275 per acre) at a United States government auction. The soils were good, with 55% of the land being comprised of prime soils and it is reported that the Sorbellos expressed their intention to grow some crops on the property. The area requires on site septic systems and well water.

In the 1996 funding round, the Sorbellos sold a development easement on 53 acres of the property, excepting out three acres on which to construct a residence, and obtained \$151,982 at that sale. Although the SADC had certified a development easement value of \$3,650 per acre (for which the Sorbellos could have received \$182,500), the Sorbellos discounted that value and accepted \$3,038 per acre. The Sorbellos are constructing a large estate home on the property and the administrator of the Gloucester CADB reports that he has received numerous complaints about the apparent extravagance of the construction on what is perceived as preserved land. As

noted, the estate residence is not, however, being constructed on the 50 preserved acres, but on an island of three acres in the midst of the preserved land which was excepted from the sale.

### **Hunterdon County - Asbury Farms, Inc.**

These two sales were reviewed because the applicant is a corporation. The owner of Asbury Farms, Inc., is Richard C. Cotton. The Asbury Farms property spans both parts of Hunterdon (Bethlehem Township) and Warren (Washington Township) Counties, and the preserved property is located in Hunterdon County. Cotton has converted approximately 150 acres of his farmland in Warren County to commercial use as a golf course. Thus, Asbury Farms, Inc., now owns land in Washington Township, Warren County, on which Hawk Pointe Golf Club, Inc. operates. In addition to farmland and the golf course, Cotton also operates Cotton Realty, L.L.C., and deals in some commercial buildings.

In the first sale, which occurred in 1997, a 123 acre parcel in Bethlehem Township was preserved.<sup>118</sup> Zoning in the area of this farm required 6 acre lots or cluster development. This crop farm had extensive frontage and less than 5% of the tract was wetlands. The soils on the property were mixed and the area required septic systems. The SADC reviewer concluded that the fair market value of the property was \$6,200 per acre and that the value restricted to farming was \$2,450 per acre. The SADC certified a development easement value of \$3,750 per acre.

In the second sale, which occurred the following year, a development easement was placed on an 85 acre tract in Bethlehem Township.<sup>119</sup> The 85 acre property was also a crop farm and was one of a group of four adjoining applications to the farmland preservation program. The

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<sup>118</sup> Block 30, lot 5.

<sup>119</sup> Block 30, lot 4.

land was located in an area of 6 acre zoning, requiring frontage of 300 feet. The soils on the property were 70% prime, with slight to severe limitations for septic systems. There appeared to be minimal wetlands. The SADC review appraiser certified the development easement value at \$3,500 per acre.

### **Hunterdon County - Schley Farms**

The Schley family is the owner of three farms which are involved in the Farmland Preservation Program. The first farm, which consists of approximately 125 acres, is known as Island Stock farm (Block 14, Lot 1), located in Readington Township. The property is owned by Elizabeth Schley and her son, John Schley. On December 30, 1998, the Schleys donated the development rights to approximately 105 acres of the farm to the Hunterdon County Farmland Preservation Program through a Deed of Easement and a Restrictive Covenant. The easement and restrictive covenant insured that the property would not be developed for a non-agricultural purpose. Approximately 20 acres of the farm was retained by the Schleys and was not part of the donation.

The other two Schley Farms, Block 15, lot 1 and Block 15, lot 1.02, are also located in Readington Township. Both farms are owned by Reeve Schley III. In about April 1999, Schley made application to the SADC to sell the development rights to the properties.

The first tract consists of approximately 62 acres of farmland. The SADC review appraiser observed that the easement values of the property, as determined by the two county level appraisers, are somewhat consistent with each other. The first appraisal determined a per acre “before” value of \$13,200 and an “after” value of \$3,500 per acre, yielding a per acre easement value of \$9,700. The second appraiser determined the per acre unrestricted market



value of the property to be \$13,650 and its value restricted to agricultural use to be \$2,875 per acre, thus yielding a per acre easement value of \$10,775. Based on the two county level appraisal reports, the SADC review appraiser concluded that the property has a per acre “before” value of \$13,400, an “after” value of \$3,500, and certified the value of a development easement on the property to be \$9,900 per acre.

The 62 acres of farmland is a crop farm in an affluent section of Readington Township. The soils on the property are 42% prime and 60% severe for septic suitability. Fifty percent of the property is in a flood plain and the property’s utilities consist of well and septic systems. There are no residences on the property, but there is a two-acre exception on which to build a future residence. The property is located in an area of 3-acre zoning, with a cluster provision.

On June 22, 2000, the SADC determined to provide 60% of the cost of acquiring a development easement on this 62 acre Schley property. The County of Hunterdon would have a cost-share of 20%, as would the municipality of Readington Township. Closing on the easement sale has not yet occurred.

The second parcel owned by Reeve Schley III and submitted to the program consists of approximately 101 acres of land. The property easement values determined by the two county level appraisers were identical for this tract. Both appraisers determined that the property had a per acre “before” value of \$13,000, an “after” value of \$3,200, and thus an easement value of \$9,800 per acre. The SADC review appraiser agreed with these values and certified an easement value of \$9,800 per acre for the 101-acre farm.

The 101 acre tract is a non-residentially improved crop and horse farm. The soils are 65% prime, 75% harvested, with mostly severe septic (68%). Thirty percent of the property is in

a flood plain and between 30% and 35% of the property is wetlands. The property has neither public water or sewer service. The neighborhood is residential-agricultural, consisting of an upward trend. The applicable zoning requires a minimum of three acre lots. There are no residences on the property, but there is a two-acre exception for the building of a future residence.

On June 22, 2000, SADC determined to provide 60% of the cost of acquiring a development easement on the 101 acre farm. The County of Hunterdon would have a cost-share of 20%, as would the municipality of Readington Township. Closing on the easement sale has not yet taken place.

#### **Mercer County - DiDonato Estate Residence**

E. Bruce DiDonato, who maintains a medical practice as an eye doctor in Hamilton Township, purchased acreage along Cold Soil Road in Lawrence Township from developer Bryce Thompson. In addition to his medical practice, DiDonato deals in commercial and residential real estate and operates the Mallard Property Management Group.

The farm acreage purchased by DiDonato actually consists of four separate parcels, only two of which were preserved by him under the Farmland Preservation Program. Another parcel already had a development easement in place when purchased by DiDonato, and an exception on which to build a residence was located towards the frontage area of that parcel. This tract was located across Cold Soil Road from the other three DiDonato parcels. Of the other three tracts, one small parcel was enveloped by a larger parcel, with only a long driveway connecting it to the roadway. Another relatively small tract was located behind the larger of these three farms and had access to the roadway through a long driveway easement, which was partially on public

parkland. DiDonato sold a development easement on the largest of these three tracts and the small parcel which it encircled. He maintains the rearmost parcel, which contains a single family house, as a hunting lodge, and that parcel is not part of the Farmland Preservation Program. He is in the process of constructing a large estate home in an excepted area on the larger of the two tracts on which he sold a development easement to the Farmland Preservation Program.<sup>120</sup> A sign on the roadway advertises that the estate home is being constructed by Vincent DiDonato, Builder. Local officials advise that the construction to date demonstrates that the house will be more than 27,000 square feet in size.

Eighty-four acres of the DiDonato land were included in the 1996 funding round, prior to the creation of the Garden State Preservation Trust. The value of an easement on the property was certified by the SADC to be \$11,600 per acre. The tract received an initial quality ranking of 22, but was raised to 5<sup>th</sup> when DiDonato discounted the easement price to \$9,836 per acre. During the course of its review of the Farmland Preservation Program, OIG was contacted by DiDonato, who wished to complain about his treatment by the Mercer CADB.

DiDonato intended to landscape his estate and, to accomplish this, he removed the existing trees which lined the roadway. An attractive post and rail fence was constructed around the property and the original trees were replaced with quality deciduous trees, which were evenly spaced and alternately placed on the estate side of the fence and the roadway side of the fence. DiDonato also landscaped the long winding driveway back to the residence he was constructing.

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<sup>120</sup> DiDonato had originally intended to except only two acres from the sale for the construction of the house. The size of the house and its septic encroachment onto the area to be covered by the development easement resulted in the county requiring a larger exception of three acres.

He landscaped the entire length of the drive with attractive high quality trees. DiDonato placed a gate across the access road to his rear property, although the access was on public park property, because he feared liability if someone were injured entering the area from this location. All of these actions by DiDonato were opposed by the Mercer CADB and SADC because, since they do not contribute to agriculture,<sup>121</sup> they violate the terms of the easement. Because of conflict between how DiDonato wished to landscape his acreage and the constraints of the development easement, ill will resulted between DiDonato and the board. DiDonato believed the actions taken by the board to oppose his landscaping of his property were unreasonable. He noted that, because of the declining number of farmers in the State, New Jersey would not have stewards for the land which was being preserved, and that all the State could reasonably expect to get in the future were “white collar farmers” like himself.<sup>122</sup>

Most ordinary farmers interviewed by OIG decried the effect the overpopulation of deer have on their crops. DiDonato, in contrast, stated to OIG staff that he was experimenting with growing “crops” which would be particularly attractive to the deer population, in order to entice

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<sup>121</sup> DiDonato explained to OIG staff that the plantings were appropriate because they provided shade for his small herd of beef cattle. He did not indicate why he had removed the original trees, which may also have fulfilled this purported agricultural purpose, in favor of trees more attractive as landscaping for his estate home.

<sup>122</sup> A universal sentiment expressed by farmer members of CADBs was their substantial concern that New Jersey would not find another generation of farmers. Most observed that the hard work, long hours, and minimal financial rewards of farming were leading the younger generation to make other, easier, choices of occupation. DiDonato accepted the same negative assumption about the future of farmers, but also recognized that many individuals with substantial income from other professions would seek the benefits of a “rural lifestyle” and want to own homes with substantial acreage. Such landowners, although they make the great bulk of their income from other occupations, qualify as farmers under State law because they utilize their land to generate at least \$500 in gross agricultural produce annually, and qualify for the lower property tax rates under the Farmland Tax Assessment.

deer onto his property for hunting purposes. DiDonato also maintained about half a dozen head of beef cattle on his property, which appeared to be confined to the area of the small farm property encircled by his estate farm.

### **Mercer County - Hart Farm**

In the 2000A funding round, seven acres<sup>123</sup> belonging to Benjamin and Mary Hart were approved for easement purchase by the Farmland Preservation Program at a per acre easement price of \$17,000 per acre.<sup>124</sup> Interestingly, in July 1999, the Harts sold 56.65 other nearby farm acreage which they owned to a developer for \$645,562, or approximately \$11,395 per acre.<sup>125</sup> The seven acre Hart parcel on which a development easement was approved for purchase is located on the south side of Federal City Road in Hopewell Township. It contains substantial frontage and is roughly pie shaped. The tract contains 100% prime soils and does not appear to have any wetlands. The land is rated moderate to severe for septic purposes.

Both county level appraisers found the unrestricted market value of the parcel to be \$20,000 per acre. These appraisers estimated the value of the tract restricted to agriculture to be \$3,000 and \$3,100 per acre. The SADC review appraiser found the “before,” or market value of

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<sup>123</sup> Block 77, lot 8.

<sup>124</sup> An easement was purchased in 1990 on a 15 acre tract of land in Hopewell Township belonging to John Hart, which is discussed as part of the Stuart Country Day School easement sale. OIG is advised that Benjamin and John Hart are not related. John Hart is the former mayor of Hopewell Township and also a local councilman. He served in both public positions only subsequently to his having preserved land through the Farmland Preservation Program.

<sup>125</sup> The Harts owned Block 75, lot 1, in Hopewell Township, a 76 acre tract assessed as farmland. They divided the tract into lots 1.01 (19 acres) and 1.02 (57 acres). The Harts retained the 19 acre parcel, but sold the other 57 acres to Presidential Hill, L.L.C., owned by developer Merrick B. Wilson.

the land to be \$20,000 per acre, the agricultural value of the land to be \$3,000 per acre<sup>126</sup> and, thus, the value of a development easement to be \$17,000 per acre.

**Mercer County - Mercrock Associates, L.P.**

Mercrock Associates, Limited Partnership, operates from New York City. The partnership owns substantial acreage in Washington Township, NJ. During the 1996 funding round, a farm of approximately 81 acres owned by Mercrock Associates was submitted to the Farmland Preservation Program. The Township of Washington, where the Mercrock Associates property was located, had purchased an easement on the property from Mercrock and made application to the State for reimbursement of the cost of the development easement. The property already contained a residence and no exceptions to the easement were sought. Part of the property is a physically separated triangular lot of about one acre in size.

The tract contained approximately 35% prime soils and approximately 98% of the cropland on the parcel was harvested. The property was located near the New Jersey Turnpike and had extensive frontage on three sides. The soil was generally good for residential development and had no discernible wetlands. The property was encumbered with a power line and a gas pipeline easements. The review appraiser observed that the land's favorable Mercer County location was offset by its poor specific location opposite two non-residential uses. The review appraiser noted that the first appraiser did not recognize a reduction in market value of the property because of the location and the existing encumbrances. The reviewer also observed,

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<sup>126</sup> If used as a single large lot for a rural residence, the entire seven acre tract (Block 77, lot 8) would be worth only about \$21,000, which seems extremely low for the Hopewell area. However, the parcel is vacant and no exception to the easement was made. Thus, the owner may not build on it. The Hart residence is on Block 75, lot 1.01.

however, that, although the power pylons had high visibility, their adverse effect was offset somewhat by their location at one end of the property. The review appraiser selected values between those of the two appraisers. He found the market value of the property to be \$8,200 per acre, the value restricted to agriculture to be \$2,000 per acre and the resulting easement value was certified to be \$6,200 per acre.

In the 1996 funding round, the SADC ranked the Mercrock Associates' property 67<sup>th</sup> out of a total of 89 properties in the initial quality ranking. Washington Township, the owner of an easement on the property, discounted the easement price almost 20%, to \$5,000 per acre. Accordingly, the property was 6<sup>th</sup> in the final SADC ranking of purchase priority.

#### **Mercer County - Mill Road Associates Property**

This property was purchased in fee simple by the SADC and then, after having imposed a development easement on the property, it was auctioned as a preserved farm. Several State legislators, wrote to the SADC in support of this fee simple purchase.

The 130 acre property was owned by Mill Road Associates, operated by Gordon Gund of the Gund Investment Corporation in Princeton, and two partners, David A Friedman and Sherman Ancier. Mill Road Associates was formed as a partnership on October 12, 1972 specifically to purchase and own this Hopewell property. The partnership agreement specified the proportion of profits which each partner would receive. In the following years, the property was rented to a tenant farmer in order that the partnership could obtain the benefit of the reduced farmland tax assessment. Whatever may have been the expectation when the partnership purchased the Hopewell property, it apparently did not proceed as expected and, some 18 years later, a conservation group developed an interest in the property.

In February 1989, the SADC was contacted by the Director of the Delaware & Raritan Greenway who stated that she had been in touch with the owner of the Hopewell property, “who is a developer, and who expressed a great interest in selling his land.” The fee simple acquisition was temporarily derailed when the Mercer CADB opposed the acquisition on the basis that limited available funds of the SADC should be used to buy productive agricultural land rather than to help promote environmental projects. A period of extended discussion and negotiation appeared to follow, culminating in the SADC being contacted in December 1992 by several State legislators supporting the purchase of the Mill Road Associates property. In December 1992, the SADC voted to re-open negotiations for the fee simple acquisition of the property. On August 30, 1993, the SADC purchased 92 acres of the Mill Road Associates property for \$10,497 per acre.<sup>127</sup> In selling the property, restricted to agriculture, at an auction, the SADC recouped approximately \$225,000, resulting in a price paid to purchase an easement on the Mill Roads Associates property of approximately \$8,068 per acre.

The entire property, including the portion not obtained by the SADC, was approximately 72% uplands and 28% wetlands. It had extensive frontage along two roads. The property had 50% tillable cropland, 24% for pasture and 25% woodlands. The property had severe soil limitations for disposal of on site sewerage, but was in an area of desirable upscale residences, with a portion of the farm bordering Stony Brook.

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<sup>127</sup> It appears that the remainder of the property was purchased in conjunction with the county for conservation purposes, but not as a farm.



## **Mercer County - Princeton Institute**

The Princeton Institute for Advanced Study is an institution of higher learning, which grants no degrees, and was established to promote intellectual inquiry by the world's great thinkers, including Albert Einstein and many other Nobel laureates. It is located on 593 acres in Princeton Borough and Princeton Township. At the time of the purchase of a development easement on the property, a portion of the property, adjacent to Battlefield Park (a Revolutionary War historical site), was simultaneously deed restricted with an easement granting public access to the woodland paths and a bike path. Approximately five of these acres, located at the southwest corner of the site, were also excepted and used for soccer fields and parking, which the Institute created for public use concurrently with the creation of the farmlands easement.<sup>128</sup> Approximately 263 acres, or 45% of the 588 acres now encumbered by a development easement, were historically farmed.

## **Mercer County - Princeton Research Lands, Inc.**

Princeton Research Lands, Inc., is a company owned by Bryce Thompson. Thompson deals in land and owns acreage in various counties in New Jersey, including Burlington, Hunterdon, Mercer, Somerset and Ocean Counties. In addition to operating Princeton Research Lands, Inc., Thompson operates Thompson Realty Company and Lanwin Development Corporation.

A 66 acre tract located in Lawrenceville and owned by Princeton Research Lands, Inc., was included in the 1997 funding round. The property had a large percentage of prime soils

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<sup>128</sup> The property was donated to the Institute by the Bamberger and Helene Fuld Foundations, with a reverter, so that the property cannot be conveyed out of Institute ownership. Accordingly, the Institute is unable to sell the land in fee simple.

(82%) and was about 22% wetlands, with moderate to severe limitations for septic systems. The owner had applied for subdivision approval. No decision had been made, although one of the appraisers quoted township representatives as saying that 13 lots might be a compromise. The two appraisers estimated development easements values for the property as \$11,600 and \$12,700 per acre. The State review appraiser selected the lesser value for certification.

**Mercer County - Sunshine International Properties, Inc.**

This 100 acre property was owned by Sunshine International Properties, Inc. Sunshine International Properties, Inc., located in Florida, is owned by Steven A. Frankel, a resident of Florida. Frankel is a broker and a real estate speculator, among many other entrepreneurial activities, as well as an attorney in Florida. The property is currently owned by Washington Township.

Washington Township purchased this 100 acre tract<sup>129</sup> for \$1,200,000 from Sunshine International Properties, with the intention of imposing a development easement and then selling the property at auction as a preserved farm. Washington Township submitted an application during the 1998 funding round to the SADC for funding of the easement. The SADC certified a development easement value off \$11,900 per acre (\$1,190,000 for the tract). The price was discounted by Washington Township, the owner, and the easement purchase was funded through the State program based on a value of \$11,198 per acre. Of that value (a total of \$1,115,055), the State funded 60%, or \$669,033. Washington Township auctioned the property, restricted to agricultural use on March 9, 1999. The successful bid was \$201,001 by Martin Wojcik, who does business as Dakota Realty. The closing took place on December 20, 1999.

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<sup>129</sup> Block 20, lot 14.

At the time of the application to the State program, the land was vacant. A one acre exception to the easement purchase was included, apparently for the construction of a residence in the future. The parcel had 2,300 feet of frontage and was in an area of two acre zoning. The tract was over 60% wetlands or wetlands buffers. Water and sewer are nearby. The property had received final approval for a 52 lot subdivision.

**Middlesex County - Peddie School, *et al.***

The Peddie School, a private secondary school in Cranbury Township, and several co-owners, submitted property to the Farmland Preservation Program during the 1994 easement purchase funding round. The 134 acre property, consisting of two tax parcels and located on Cranbury Neck Road in Cranbury Township, was comprised of 80% prime soils. The property had good frontage and soils.

Because of its location in Cranbury, the Peddie School property commanded a high sales value. The market value of the property was estimated to be \$11,000 per acre. The value of a development easement on the property was certified at \$8,100 per acre. The owner discounted the bid price to \$7,670 per acre. Thereafter, the owners sold the two tax parcels which comprised the 134 acre preserved property in separate sales.

On October 31, 1997, the Peddie School, *et al.*, sold Block 22, Lot 4 to Sayed and Aida El Shakry. This 56.3 acre tract sold for \$145,000, or \$2,575 per acre. The parcel fronts on both Cranbury Neck Road and Ancil Davidson Road. The tract contains 79% prime soils. Although this tract has no residential site development opportunity and no improvements on the site, the Shakrys already owned a house located at 81 Cranbury Neck Road. The former Peddie School tract, located at 75 Cranbury Neck Road, expanded their residential holdings.

On March 18, 1998, the Peddie School, *et al.*, sold Block 23, lot 99, a 78 acre tract restricted to agriculture and fronting on Cranbury Neck Road, to Kevin and Susan White for \$270,000. This reflects a per acre price of \$3,461. The tract sold with one residential site development opportunity and no improvements. The land is 85% prime soils and 15% wetlands.

**Monmouth County - Fair Winds Farm, Inc.**

A 136 acre property belonging to Fair Winds Farm, Inc., was included in the 1995 easement purchase round. The property, located on Red Valley Road in Upper Freehold Township, was a Standardbreds horse farm in a neighborhood with very little development. A residence and a number of out buildings were located on the property.<sup>130</sup> Fair Winds Farm, Inc., also owns an 8.5 acre property at 51 Walnford Road<sup>131</sup> in Cream Ridge (Upper Freehold Township - Block 51, lot 1.02), and a 308.17 acre property on Holmes Road<sup>132</sup> in Cream Ridge (Upper Freehold Township - Block 41, lot 1). Edward K. Mullen, who operates Fair Winds Farm, Inc., owns various other properties, including acres of farmland in Alloway Township in Salem County and a residential shore property in Bay Head Borough in Ocean County.

The property submitted to the program was comprised of about 20% wetlands along a stream which flows through the property. The SADC, finding the land to have an unrestricted

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<sup>130</sup> An acre containing the buildings on the preserved property is assessed at \$405,300. The remaining acreage of the Red Valley Road tract is assessed at \$41,200.

<sup>131</sup> One acre, with improvements, of the Walnford Road property is assessed at \$191,600. The remaining 7.5 acres are assessed at \$5,100.

<sup>132</sup> The acre containing improvements at the Holmes Road address is assessed at \$635,400. The remaining 307.17 acres are assessed at 119,100.

market value of \$8,500 per acre and a value restricted to agriculture of \$2,750 per acre, certified a development easement value of \$5,750 per acre for the Fair Winds Farm, Inc., property.

**Monmouth County - James E. Lamb & Son, Inc.**

James E. Lamb & Son, Inc. (trading as B & J Nursery) applied in 1990 for a Farmland Preservation Program development easement on a 183 acre tract in Upper Freehold Township. Approximately 32% of the property contained prime soils and 44% was affected by wet or flood hazard conditions. Improvements included a two-story residence and 21 greenhouses. An easement was purchased on the property for \$7,869 per acre.

**Monmouth County - Rue Brothers, Inc.**

This property, in the name of Rue Brothers, Inc., was included in the 1995 funding round and at the time of appraisal was a large dairy farm. Today the farm is used to grow wheat, corn, beans and hay. It additionally is used to raise a few head of beef cattle and horses. George Rue is currently the president of the corporation.

The land is located just outside of Imlaystown in Upper Freehold Township and adjoins another farm. It is comprised of 332 acres, of which about 47 acres or 15% is wetlands. Approximately eleven acres are located in a body of water. The farm is bisected by Route 195.

At the time of the appraisal there was little development occurring in this area of Monmouth County. Accordingly, comparable sales were difficult to obtain. In estimating the “before” value, one appraiser used four comparables, two of which were located in Manalapan and one of which had preliminary approvals. In the case of the second appraiser, the scarcity of data led to wide variations in sale prices. The review appraiser observed that despite the lack of

sale data in this section of Monmouth County, the adjusted values arrived at by the appraisers were close.

The SADC estimated that the property's market value was \$9,000 per acre and its value restricted to agriculture \$2,500 per acre. The easement value was certified to be \$6,500. The owner took a discount from the certified value and received \$6,286 per acre at the October 9, 1996, closing on the easement sale.

### **Monmouth County - Walnford Stud Farm**

Owned by Joseph and Karen Jennings and Herman Boss, and doing business as Walnford Stud Farm, this 78-acre property was placed into the program in 1992 at a per acre easement cost of \$8,150. The "before" (market value) estimate of the property was established by the SADC at \$12,150 per acre and the "after" (agricultural value) estimate was \$4,000 per acre.

The property is on a single lot in Upper Freehold Township. It has a total of approximately 92 acres, with some 12 acres excepted from the easement sale. The property has 98% severe soils for septic suitability and slightly more than 13% wetlands or flood zone acreage. A single residence and equine facilities are on the property. It is located in an area in which much of the property receives the farmland tax assessment.

### **Monmouth County - Walnridge Farms, Inc.**

Approximately 196 acres of this farm, owned by several members of the Meirs family,<sup>133</sup> were placed in preservation in 1989 at a cost of \$5,991 per acre. The farm is located on Hornerstown-Arneytown Road in Cream Ridge (Upper Freehold Township). The SADC's

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<sup>133</sup> The Walnridge Farm, Inc., property houses a equine clinic and members of the Meirs family are doctors of veterinary medicine.

valuation in 1989 had a “before” (market value) estimate of \$12,000 per acre for this property and an “after” (with a development easement in place) estimate of \$4,000 per acre. Thus, the value of a development easement was certified at \$8,000 per acre and the price paid represents a discount taken by the owner.

The property is located in Upper Freehold Township. It sits on two lots and is comprised of approximately 31% prime soils and approximately 66% of the property is tillable. The balance of the property is either wooded or subject to wetlands or a flood hazard along the Lahaway Creek.

The property contains an equine clinic, a 16-stall receiving barn, main barn with breeding and surgery areas, three other stables having 5, 18, and 8 stalls respectively, a hay barn, three run-in sheds and extensive plank fencing. The property is located in an area with a mixture of agricultural enterprises, *i.e.*, cash crops, nursery stock and horse farms. Around 1989, there had been increasing development pressures in the western part of Monmouth County due to the scenic area, lower land prices relative to other areas, and convenience of access to county highways, the New Jersey Turnpike, the Garden State Parkway and Interstate 195.

The Meirs family has also sold development easements on properties in the name of two other business entities: Concorde Stud Farm and Lahaway Creek Farm. In May 1999, a development on 239 acres of the Concorde Stud Farm<sup>134</sup> was purchased at a cost of \$4,908 per acre. In September 1989, an easement was purchased on the 70 acre Lahaway Creek Farm<sup>135</sup> at a cost of \$8,100 per acre, or a total of \$566,004. The latter easement purchase was funded entirely

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<sup>134</sup> Block 28, lots 1 and 1.02.

<sup>135</sup> Block 55, lot 17.

by the county without contribution by the SADC. The Meirs had purchased the Lahaway Creek Farm property for \$150,000 in 1983.

### **Morris County - Drew University**

In 1989, Drew University sold the development rights to 111 acres of land located on Route 24 in Washington Township to the Morris CADB, in accordance with the Farmland Preservation Program, for \$17,516 per acre. Because Drew University is not a farmer, OIG reviewed this transaction. Although the average per acre easement price in Morris County through October 2000 is \$10,184, OIG found that the per acre price paid for the Drew University tract is commensurate with several other sales in Morris County, specifically the Hildebrant property in Mount Olive, and the three Farrand properties, as well as the Andrews and Jenkinson properties, in Washington Township.

Drew University acquired the subject property by bequest from a private citizen and maintained the property as a farm. The soils on the property are 60% prime. Some of the soils on the property are wetlands or supporting woodlands. On October 13, 1988, Drew University and the Morris CADB entered into a deed restriction agreement whereby Drew University agreed to maintain the property for agricultural use and production for a period of eight years in exchange for, among other things, the opportunity to sell a development easement on the property. On January 17, 1989, Drew University sold the development rights to the property to the Morris CADB.

As indicated in the SADC review appraiser's report, dated June 23, 1988, before the Drew University property<sup>136</sup> was purchased by the Morris CADB, two appraisals of the property

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<sup>136</sup> Block 36, lot 41, Block 28, lots 16, 16.01, 16.02.



were performed. The appraisals were submitted to the SADC when the CADB sought reimbursement for the easement purchase. The SADC review appraiser noted a substantial discrepancy as to the value of the Drew University property in the two appraisal reports. The first appraisal report indicates that the Drew University property had a per acre “before” value of \$20,005 and a per acre “after” price of \$2,489, yielding an easement value of \$17,516 per acre. Conversely, the second appraisal report indicated that the Drew University property had a per acre market value of \$13,496, a value restricted to agriculture of \$3,104 per acre, with an easement value of \$10,392. The SADC reviewer determined that the fair market value of the property was more in line with the first appraisal report, given the property’s location and its favorable topography. In accordance with the first appraiser’s report, the SADC concluded that the easement value for the Drew University property was \$17,516 per acre. The SADC authorized payment of \$1,000,000 to Drew University with the remaining cost of \$557,383 to be paid subject to the availability of funds.

While there was a wide discrepancy between the two independent appraisals for this property, with the certified value close to the upper value rather than the lower value, the value election was premised on a divergence in the appraisers’ estimation of the development pressure expected to occur in Washington Township. Construction of an AT&T complex in Bedminster was expected to contribute significantly to development of the area. Washington Township remains largely undeveloped at this time but the price paid, as noted, was comparable to others in the area during the same time period.

On September 22, 1995, after selling the development rights, Drew sold the land to private citizens as a preserved farm. The property is currently an attractive operating farm.

### **Morris County - Liebenzell Mission of USA, Inc.**

The Liebenzell Mission property, located in Washington Township, was placed in the Farmland Preservation Program in 1995 and had been part of the 1994 funding round. The preserved portion is 100 acres. Although the value of a development easement on the property was certified at \$9,000 per acre, the owners accepted a discounted easement price of \$8,451 per acre. The SADC found the market value of the tract to be \$12,000 per acre and its value restricted to agriculture to be \$3,000 per acre. The property was ranked 52<sup>nd</sup> in the initial quality ranking.

The land is actually multiple lots. There is one multi-family residence. In addition, there are three exceptions, for a total of 40.15 acres. The excepted acreage is used for non-agricultural purposes, such as the mission administration buildings, recreation field, etc. The property is 71% tillable cropland, 20% woodland and 9% pond. The soils are approximately 20% prime.

The Liebenzell Mission operates a retreat center and guest house atop Schooley's Mountain. The preserved farmland is part of the "pastoral scenery" which the Mission advertises to offer its visitors. The land is currently farmed by a tenant farmer and is used to produce hay.

### **Morris County - Maier Brothers**

George, Douglas and Kurt Maier operate a fresh fruit and vegetable market in Washington Township. Their farm property is located along Parker Road and Old Turnpike Road in Washington Township. They submitted the tracts separately to the Farmland Preservation Program.

The 98 acre Parker Road property was included in the May 1988 funding round. The site,

which actually consists of three lots, is located in an area with minimum three acre zoning. The land is encumbered with two major electrical transmission lines which cross the property. One is a 200 foot wide Public Service Electric & Gas powerline and the other is a 150 foot wide Jersey Central Power and Light powerline. There is also a 20 foot wide drainage easement in the southerly portion of the tract. There are four residential dwellings and various agricultural buildings on the property. Three of the residences are occupied by the Maier brothers and their families and the other is used for farm labor housing. The agricultural buildings consist of a polebarn, a roadside farm market for retail sales and various greenhouses. The tract has only about 562 feet of frontage on Parker Road. In the May 1988 funding round, the SADC certified an easement value of \$12,500 per acre for the 98-acre Maier Brothers property in Washington Township.

The Maiers also sold a development easement on 136 acres of their Old Turnpike Road property in Washington Township on December 30, 1997. The easement on this latter property was sold for \$6,052 per acre. It is noteworthy that, on March 13, 1998, the Maier brothers sold approximately 26 acres of the Old Turnpike Road property to the Department of Environmental Protection for \$8,865 per acre.

#### **Morris County - Palmer Charitable Trust**

The property of the Palmer Charitable Trust is a crop farm with a heavily wooded area. The neighborhood is partially developed. Located in Washington Township, there are three lots to the property. Its 46 acres have no residual dwelling site opportunities. There is a two-acre exception for the owners' residence, which also houses a medical practice.

The property is 50% tillable cropland and 42% woodland. The soils are 79% prime. In the 1994 funding round, the SADC ranked this property 25<sup>th</sup> in its initial quality review and, with owner discounts figured, 5<sup>th</sup> of the 51 farms approved for easement purchases. It was the top-ranked application in Morris County for that year.

The SADC's "before" (market value) estimate was \$14,000 per acre and its "after" (agricultural) estimate was \$3,000 per acre. The resulting development easement was certified at \$11,000 per acre. When the property was placed in the program, the owner discounted the easement price to \$9,925 per acre.

#### **Morris County - Tode Pond Partnership**

On May 29, 1992, a development easement was placed on 53 acres of land belonging to the Tode Pond Partnership. The Tode Pond Partnership, a partnership including Lorens and Kathryn Fasano, also owns vacant land in Hunterdon County. The property, submitted to the Farmland Preservation Program in the 1991 funding round, is located on West Mill Road in Long Valley (Washington Township). It is a single tax parcel with no exceptions or easements. There is a historic dwelling on the property which the SADC reported in 1991 was in need of total refurbishment. The land is mostly level and the soils are 100% prime with only about 3% wetlands.

In 1988, preliminary subdivision approval was granted for 15 lots on the Tode Pond Partnership property, one of which was improved with the existing dwelling, plus a 7.7 acre area of open space. In 1988, there was a contract of sale on the property for \$29,252 per acre for the gross acreage, or \$49,841 per acre for the area of 31.4 acres encompassed by the 13 saleable lots.

The sale was not completed.

The SADC review appraiser noted the recent decline in the real estate market. The market value of the Tode Pond Partnership property was estimated at \$21,000 per acre and the value restricted to agriculture was deemed to be \$5,000 per acre. Thus, the certified easement value was \$16,000 per acre. Tode Pond Partnership discounted the easement bid price and received \$9,525 per acre for the easement placed on their 53 acres of land. On June 12, 1998, Tode Pond Partnership sold the restricted property for \$270,000 to a Mendham resident. The property is now operated as Sweet Grass Farm LLC.

#### **Ocean County - Baldachino & Wishengrad**

Red Bird, Inc., and C.W. Plan, Inc., submitted 129 acres in Plumsted Township to the Program in the 1996 easement purchase funding round. On December 1, 1997, the corporations transferred ownership of the land to Gerald Baldachino<sup>137</sup> and Alvin Wishengrad as tenants in common.<sup>138</sup> Baldachino and Wishengrad are developers who operate as Baldachino & Wishengrad, LLC. Closing on the easement sale occurred on February 13, 1998.

Their property was comprised of two non-contiguous, adjacent tracts, divided by Brynmore Road.<sup>139</sup> The soils on the property is not well suited to septic development. The land

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<sup>137</sup> A 97 acre tract located in East Windsor in Mercer County was submitted in the 1997 funding round by Gerald Baldachino, Sr. The SADC established a certified easement value of \$8,100 per acre for the property. The easement price was discounted by the owner to \$7,290 per acre.

<sup>138</sup> Red Bird, Inc., and C.W. Plan, Inc., are affiliated with Baldachino and Wishengrad.

<sup>139</sup> Block 83, lot 11, and Block 84.01, lot 57, located at 140 and 141 Brynmore Road.

is zoned three acre minimum residential lots. Baldachino & Wishengrad obtained preliminary approval for a seven-lot subdivision on the 141 Brynmore tract, Lot 57.<sup>140</sup> The property across the road, 140 Brynmore Road, is burdened with a 155' wide JCP&L easement. The lots include scattered wetlands and a stream, comprising approximately 30% of the property.

The SADC found the market value of the combined property to be \$4,600 per acre, the value restricted to agriculture to be \$1,800 and certified a development easement value of \$2,800 per acre on the property. The easement price was discounted to \$2,713 per acre at closing on the easement sale. The properties are still listed on local tax rolls as owned by C.W. Plan, Inc., an affiliated company of Baldachino & Wishengrad.

#### **Ocean County - Charles Plum Corp.**

This 368 acre property in Plumsted Township was included in the 1992 SADC easement funding round. Approximately 20% of the property is wetlands. Of the soils on the tract, 52% are prime and 250 acres are tillable, with approximately 30 suited for pasture.

The SADC certified an easement value of \$3,050 per acre for the property. The owner discounted the easement price to \$2,945 at closing on November 30, 1993. On March 11, 1994, Charles Plum Corp. sold approximately 157 acres of the preserved land to Hallock U-Pick Farm Ltd. for \$461,929, or about \$2,950 per acre.

#### **Ocean County - Van Kirk Partnership**

The property of the Van Kirk Partnership, located in Plumsted Township, was entered

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<sup>140</sup> Ocean CADB member Mark C. Vodak owns a preserved farm of less than ten acres located at 139 Brynmore Road, Block 84.01, lot 57.01. Vodak's farm was preserved on August 20, 1998.

into the Farmland Preservation Program during the 1995 funding round. An easement was purchased on the 117 acre property at a cost of \$3,000 per acre, which was the certified value of an easement on the property. The market value of the property was estimated at \$6,000 per acre by the SADC.

The property was number 51 on the SADC final ranking out of 51 farms preserved in the 1995 funding round. The property is a horse farm with extensive paddocks, barns and a track. There is also a residence. An overhead powerline crosses the eastern end of the land.

**Salem County - Cloverdale Dairy Farms, Inc.**

The Cloverdale Dairy is owned by Elmer and Vera Pettit.<sup>141</sup> It is located in Pilesgrove Township on nine tax parcels. A total of 410 acres were preserved although, because this included three residual dwelling site opportunities on four acres each, the net acreage for payment calculation was 398 acres.

When it was evaluated for the easement purchase program for the 1991 funding round, there were four dwellings plus outbuildings on the property. The property contains approximately 13% wetlands or flood zone land. The soils are 55% prime. The topography is level to gently rolling. The property abutted a property of approximately 465 acres which had been preserved by the Nature Conservancy at a fee simple cost of approximately \$3,800 per acre.<sup>142</sup>

The county level appraisers differed notably in their assessment of both “before” and “after” values, although their calculations of the worth of a development easement on the property were reasonably similar. One appraiser estimated the unrestricted market value of the property to be \$6,327 per acre; the other found the unrestricted market value to be \$3,800 per

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<sup>141</sup> Philip M. Pettit is president of Cloverdale Dairy Farms, Inc. Elmer S. Pettit is vice president, and Cheri L. Pettit is secretary of the corporation. Although SADC records document that Elmer Pettit is a Salem CADB member, OIG did not interview Pettit.

<sup>142</sup> It was noted that the Cloverdale Dairy property contained better soils than the property purchased by the Nature Conservancy.



acre. The first appraiser estimated the “after” value to be \$3,885 per acre and the second found the restricted value of the property to be \$1,000 per acre. Thus, the appraisers estimated the value of a development easement on the property to be, respectively, \$2,442 and \$2,800 per acre.

The State review appraiser noted that the current market in the area was not experiencing imminent development pressure. He noted that numerous landowners, however, had procured or applied for subdivision approvals. The review’s discussions with various real estate people and government personnel indicated that these applications were “primarily a move to preserve equity in reaction to perceived impact the ‘State Plan’ may have rather than a reaction to heavy demand for residential development.” The review appraiser found the unrestricted value of the property to be \$3,800 per acre, the value restricted to agricultural use to be \$1,000 per acre. The value of a development easement on the property was certified at \$2,800 per acre. In 1992, 410 acres of the Cloverdale Dairy were preserved at the discounted price of \$2,174 per acre.

#### **Salem County - E. Joyce & Son, Inc.**

E. Joyce & Son, Inc., operates the Edgar Joyce Nursery in Cumberland County and on adjacent land in Salem County. The company sold development easements on both properties to the Farmland Preservation Program.

The 98-acre Cumberland County parcel was included in the 1995 funding round.<sup>143</sup> The land is 92% tillable and the soils are 67% prime. There is minimal frontage on Route 77, which rendered development less likely. The market value of this property was estimated to be \$2,700

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<sup>143</sup> The Cumberland County portion of the E. Joyce & Son, Inc., nursery is located on Block 2, lot 2 and Block 4, lot 2, in Upper Deerfield Township.

per acre, and its value restricted to agriculture to be \$900 per acre. Thus, the value of a development easement on this tract was certified at \$1,800 per acre by the SADC.

The 83-acre Joyce tract in Salem County, located in Alloway Township, was also included in the 1995 SADC easement funding round. A three acre exception from the easement was made for the tract's residence. The soils on the land are 81% prime. The two parcels submitted in Salem County<sup>144</sup> are separated by a small lot. The SADC found the market value of this property to be \$3,400 per acre, the value restricted to agriculture to be \$1,100 and the resulting easement value to be \$2,300 per acre. The owner discounted its easement bid price to \$2,100 per acre.

#### **Somerset County – Foxcroft Farms Corporation**

Foxcroft Farms Corporation,<sup>145</sup> located in Miami, Florida, owned two separate and non-contiguous tracts of land located in Branchburg Township. The properties were both open hilltops/hillsides of modest slope with scenic views. Both were located in an area zoned agricultural or residential, with three acre minimum lot size. The parcels were vacant, unimproved land. Wells and septic systems are common in the area. Wetlands are minimal. It was noted that at the time of the appraisals, the real estate market for developable land had declined. It appears that this decline may account for the owners' decision to sell a development easement to the State.

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<sup>144</sup> Block 45, lots 3 and 5, Alloway Township.

<sup>145</sup> Foxcroft Farms Corporation was incorporated in New Jersey in December 1982. Its corporate officers reside in Coral Gables, Florida.

Closing on the purchase of the development easement occurred in March 1992. The combined 249 acres on which an easement was sold to the program, consisted of 36% prime soils. The smaller parcel was considered to possess good to fair potential as cropland, while the larger was moderately well suited for corn, soybeans, small grains, vegetables, hay.

The parcels were treated as a single entity by the SADC. The county level appraisers estimated the market value of the property as \$16,000 and \$18,000 per acre. They estimated the value of the property restricted to agriculture to be, respectively, \$4,000 and \$3,500 per acre. The State review appraiser estimated the “before” value to be \$16,000 per acre and the “after” value to be \$3,500 per acre. The SADC certified a development easement value of \$12,500 per acre. A development easement was placed on the property in 1992 at a per acre cost of \$11,897.

In October 1996, the smaller of the two parcels, approximately 88 acres located on South Branch Road, was sold by Foxcroft Farms Corporation. The purchaser paid \$272,800 for the tract, which reflects approximately \$3,100 per acre. This farm was sold with one residual dwelling site opportunity. In June 2000, the larger of two parcels (approximately 160 acres) was sold as a preserved farm by Foxcroft for \$570,000, or approximately \$3,560 per acre.

### **Somerset County - Gallup Farm**

In June 1992, the SADC certified an easement value of \$8,000 per acre for 341 acres of the Gallup Farm in Montgomery. The property was submitted by E. R. Keller Group, Inc., and was a large country estate just outside of Princeton, and is actually comprised of 15 tax parcels.<sup>146</sup> There were several large residences on the property occupied by family members. In addition,

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<sup>146</sup> Portions of the estate are owned by Mountainview Partners and Strode Creek Partners, and these business entities, in turn, appeared to be operated by family members. The property fronts on Mountainview Road, Route 518 (Rocky Hill/Blawenburg Rd.) and the Great Road.

several residences had been subdivided off and were also occupied by family members. In addition, subdivision approval was granted in April 1992 for a portion of the property.

The property is comprised of 24% prime soils and approximately 19% is wetlands. Approximately 60% of the tract is tillable cropland, 25% is pastured and 15% is woodland. The SADC review appraiser found the unrestricted market value of the property to be \$14,000 per acre and that the property's highest and best use after restriction to agriculture to be as a residential estate with acreage, estimating this value at \$6,000 per acre. The owners discounted the easement price to \$7,170 per acre. Accordingly, the Gallup family members received approximately \$2.5 million for placing an development easement on some of their acreage.

#### **Somerset County - Matjes Associates, LLC**

The principals of Matjes Associates are Thomas N. and Thomas A. D'Alturi. The business address of Matjes Associates is 667 Evergreen Parkway in Union, which is also the address of Thomas N. D'Alturi. Matjes Associates owned four adjacent lots along Millstone River Road in Belle Mead, NJ (Hillsborough Township) totaling approximately 206 acres. Thomas A. and Cheryl D'Altrui live on a farm of approximately ten acres adjacent to the lots owned by Matjes Associates. Eight acres of the D'Altruis' ten acre farm are assessed as farmland and the remaining two acres, containing the residence, are assessed at \$407,100.

In the 1996 funding round, Matjes Associates offered a development easement on three of the lots, approximating 104 acres, excepting out three areas. A residence on one lot, currently assessed at more than \$365,000, already exists in one of the excepted areas on a 28 acre parcel. An exception to the easement was included on each of the other two lots in order that additional residences could be constructed on those lots in the future. These other two lots were

approximately 50 acres and 37 acres, respectively, in size, including the areas excepted from the easement sale. The entire tract was located in an area without sewer service, but water was available. The acreage was being used as a horse farm. There were no wetlands on the property. Zoning on the lots permitted two acre residential and six acre residential, but a special ordinance restricted the total units which could be constructed on the property to 19.

The two appraisals estimated the unrestricted market value of the land to be \$19,000 and \$14,500 per acre and the value restricted to agriculture to be, respectively, \$2,300 and \$2,600 per acre, resulting in an easement value of between \$16,700 and \$11,900 per acre. The State review appraiser observed that, in evaluating the “before” value, the appraisers had both used comparables which already had approvals for subdivision, while the Matjes Associates did not. The review appraiser noted that it was difficult on review to value a property without approvals by using all approved sales. Accordingly, the review appraiser expressed less than optimal confidence in the appraisals and, based on these uncertainties, recommended that the lower \$14,500 per acre be used as the “before” or unrestricted market value. In discussing the “after” or value restricted to agriculture, the State reviewer noted that one of the appraisals had adjusted restricted comparables negatively because each restricted sales had included a residual dwelling site opportunity. The reviewer observed that, because the Matjes Associates’ property had three exceptions for residences, the comparables should have been viewed more favorably against the subject property. Accordingly, the review appraiser accepted the second appraiser’s “after” value of \$2,600 per acre, resulting in a certified easement value of \$11,900 per acre. Closing on the easement sale took place in December 1997.

Before closing on the easement sale, Matjes Associates sold their other lot adjacent to the land to be restricted by the development easement. The buyer of this 89 acre parcel was Country Classics, Inc., in Hillsborough, a developer of numerous lots in the township, elsewhere in the county and in various other areas of the State. Most of the local properties developed by Country Classics sold for well over \$300,000. The sale price paid by Country Classics for the 89 acre Matjes Associates lot was \$3,215,500 or more than \$36,000 per acre.

#### **Somerset County - 255 Triangle Associates**

This 57 acre property is also located in Hillsborough Township within Somerset County. It is an irregularly shaped tract of land, with railroad and power line rights-of-way on the sides of the parcel and a utility easement traversing the southwest corner of the property. At the time of the appraisal, the land was vacant, level and leased out to a farmer. The cropland was 100% harvested by a tenant.

The tract was submitted to the Farmland Preservation Program under the name 255 Triangle Associates, L.P. The address for 255 Triangle Associates is that of its registered agent, an attorney in Florham Park. The incorporator of 255 Triangle Associates is Big M Hillsborough, LLC. Big M is operated by Laurence H. Mandelbaum of Montclair. Mandelbaum operated the Mandeess and Annie Sez shops and, operating through various partnerships and corporations, is a land speculator.

The soils on the property are 92% prime. It contains less than 10% wetlands. Available services to the site included gas, electric and telephone. The availability of both water and public sewer to the site were pending at the time of the appraisal. In 2000, the 57 acre tract was entered into the Farmland Preservation Program. The per acre cost paid was \$10,400. The SADC's

review appraiser had estimated the per acre market value at \$16,200 and the agricultural value at \$3,000, with a resulting easement value of \$13,200 per acre.

In December 2000, having had no luck selling the tract, Big M, Inc., donated the restricted land to the Township of Hillsborough. Big M will, of course, receive a tax deduction under federal law for the donation.

### **Sussex County - Martin & Mulhaupt Farm**

OIG reviewed this sale to determine if the owners were farmers, or a business entity which dealt in real estate. The property appears to be owned and farmed by two individuals. Virginia H. Martin and Joan M. Mullhaupt own approximately 90 acres of farmland along Route 94 in Vernon Township.<sup>147</sup> Portions of the property abut the New York State line. Approximately 69 acres of the property were included in the 1997 easement purchase round.

The first county level appraisal of the property determined the per acre “before” value to be \$4,400 and the “after” value to be \$1,200, yielding a per acre easement value of \$3,200. The second appraisal report determined a per acre “before” value of \$4,000 and an agricultural value of \$1,250, resulting in a per acre development easement value of \$2,750. Based on the two appraisal reports, the SADC review appraiser concluded that the property had a per acre market value of \$4,200, an agricultural value of \$1,200, and a per acre easement value of \$3,000.

The 69-acre property is a part of a larger horse farm that is divided by the New York/New Jersey boundary. The portion in New Jersey was appraised for easement purposes. There is a two acre exception. The property was encumbered by a 100-foot utility easement located near or on the property’s northeasterly corner. The property contains sheds, stables and barns. The soils

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<sup>147</sup> Block 40, lots 2 and 8; Block 42, lot 3.02.

are described as predominantly developable. The property is subject to some flooding and about 13% of the property is wetlands. The property has a good frontage/acreage ratio.

#### **Sussex County - Ricker Brothers**

Ricker Brothers is a partnership of Walter and Douglas Ricker. The Ricker Brothers farm is located in Wantage Township. It is comprised of four tax lots.

There were no residences on the farm during the 1996 funding round. Because of the size of its acreage, it was eligible for two residual dwelling site opportunities. There were also two exceptions, of 7.3 and 4.2 acres. At the time it was appraised, the property was being used as a dairy farm. This may have been due to its poor soils (.01% prime and 14% statewide). It has a small amount of wetlands, 64% harvested cropland and 27% lands in pasture.

The 250 acres were placed in the Farmland Preservation Program in 1997 at a cost of \$2,949 per acre, although the State had certified the easement value at \$3,250 per acre. The SADC had ranked this property 44 out of 89 in its initial quality ranking during the 1996 funding round. It estimated a fair market value of \$4,350 per acre for the property and an agricultural value of \$1,100 per acre.

#### **Warren County - Blazing Star Realty Corporation**

The Blazing Star Realty Corporation was a subsidiary of CoreStates Bank (now First Union Bank). The bank acquired the property by deed in lieu of foreclosure. The property had been owned by a land speculator who was leasing the property to an adjoining farmer. The property had been approved for the construction of 1,026 dwelling units, including 54 low or moderate income housing units in compliance with the *Mount Laurel* decision.



Application to the Farmland Preservation Program was made in May 1996. The property is on nine tax lots. Improvements on the property are a circa 1750 residence, two stone barns and an uninhabitable residence. The soils are 61% prime and the tract is 89% tillable. Its 561 acres were preserved in 1998 at \$4,385 per acre.

The Green Acres and Farmland Preservation Program worked together in preserving this tract. In the course of assembling and re-zoning the property, a deed of covenant restricted 164 acres to open space pursuant to the Green Acres Program. The SADC, the Green Acres Program, Warren County, the Township of Pohatcong and the Philipsburg Riverview Organization all agreed to contribute financially to the preservation of the property because they viewed its preservation as a matter of some significance. The farm was acquired in fee simple by the SADC and then offered at auction with permanent development easements imposed. The Green Acres Program in the Department of Environmental Protection purchased a conservation easement on a portion of the property in order to protect the nesting habitat of threatened and endangered bird species. In 1998, the SADC agreed to convey 128 acres of the property to the DEP and Philipsburg Riverview Organization for permanent preservation in a manner to enhance the habitat of grassland bird species.

**PART III:**  
**DRAFT STATUTES**

**1. Proposed Criminal Penalties for Purposeful or Knowing Violations of the Conflicts of Interest Law and the Local Government Ethics Law**

**Conflicts of Interest Law N.J.S.A. 52:13D-23**

Subsection (e) [no change]:

(e) A code of ethics for officers and employees of a State agency shall conform to the following general standards:

(1) No State officer or employee or special State officer or employee should have any interest, financial or otherwise, direct or indirect, or engage in any business or transaction or professional activity, which is in substantial conflict with the proper discharge of his duties in the public interest.

(2) [omitted]

(3) No State officer or employee or special State officer or employee should use or attempt to use his official position to secure unwarranted privileges or advantages for himself or others.

(4) [omitted]

(5) [omitted]

(6) No State officer or employee or special State officer or employee should accept any gift, favor, service or other thing of value under circumstances from which it might be reasonably inferred that such gift, service or other thing of value was given or offered for the purpose of influencing him in the discharge of his official duties.

(7) [omitted]

(8) [omitted]

(f) [omitted]

**New subsection:** (g) Regardless of whether an agency has adopted a code of ethics in conformance with this section, State officers and employees and special State officers and employees must comply with subsections (e)(1), (e)(3) and (e)(6) of this section. A State officer or employee or a special State officer or employee who purposely or knowingly violates or attempts to violate the provisions of subsection (e)(1), (e)(3) or (e)(6) of this section shall be guilty of a crime of the third degree. The terms “purposely” and “knowingly” as used in this subsection shall have the meaning prescribed in N.J.S.A. 2C:2-2. A prosecution under this subsection shall not preclude action under any other applicable law.

**Local Government Ethics Law N.J.S.A. 40A:9-22.5**

Local government officers or employees under the jurisdiction of the Local Finance Board shall comply with the following provisions:

(a) No local government officer or employee or member of his immediate family shall have an interest in a business organization or engage in any business, transaction, or professional activity, which is in substantial conflict with the proper discharge of his duties in the public interest;

(b) [omitted]

(c) No local government officer or employee shall use or attempt to use his official position to secure unwarranted privileges or advantages for himself or others;

(d) [omitted]

(e) [omitted]

(f) No local government officer or employee, member of his immediate family, or business organization in which he has an interest, shall solicit or accept any gift, favor, loan, political contribution, service, promise of future employment, or other thing of value based upon an understanding that the gift, favor, loan, contribution, service, promise, or other thing of value was given or offered for the purpose of influencing him, directly or indirectly, in the discharge of his official duties. This provision shall not apply to the solicitation or acceptance of contributions to the campaign of an announced candidate for elective public office, if the local government officer has no knowledge or reason to believe that the campaign contribution, if accepted, was given with the intent to influence the local government officer in the discharge of his official duties;

(g) No local government officer or employee shall use, or allow to be used, his public office or employment, or any information, not generally available to the members of the public, which he receives or acquires in the course of and by reason of his office or employment, for the purpose of securing financial gain for himself, any member of his immediate family, or any business organization with which he is associated;

(h) [omitted]

(i) [omitted]

(j) [omitted]

(k) [omitted]

**New subsection:** (l) Regardless of whether a local government officer or employee is subject to regulation by a county or municipal code of ethics promulgated by a county or municipal ethics

board in accordance with the provisions of this act, local government officers and employees must comply with subsections (a), (c),(f) and (g) of this section. A local government officer or employee who purposely or knowingly violates or attempts to violate subsection (a), (c),(f) or (g) of this section shall be guilty of a crime of the third degree. The terms “purposely” and “knowingly” as used in this subsection shall have the meaning prescribed in N.J.S.A. 2C:22. A prosecution under this subsection shall not preclude action under any other applicable law.

## **2. Proposed Increase in Civil Penalties for Violations of the Local Government Ethics Law**

### **Local Government Ethics Law N.J.S.A. 40A:9-22.10**

- a. An appointed local government officer or employee found guilty by the Local Finance Board or a county or municipal ethics board of the violation of any provision of P.L. 1991, c. 29 (C.40A:9-22.1 et seq.) or of any code of ethics in effect pursuant to P.L. 1991, c. 29 (C.40A:9-22.1 et seq.), shall be fined not less than [~~\$100.00~~] \$500.00 nor more than [~~\$500.00~~] \$10,000.00, which penalty may be collected in a summary proceeding pursuant to "the penalty enforcement law" (N.J.S.2A:58-1 et seq.). The board or a county or municipal ethics board shall report its findings to the office or agency having the power of removal or discipline of the appointed local government officer or employee and may recommend that further disciplinary action be taken.
  
- b. An elected local government officer or employee found guilty by the Local Finance Board or a county or municipal ethics board of the violation of any provision of P.L. 1991, c. 29 (C.40A:9-22.1 et seq.) or of any code of ethics in effect pursuant to P.L. 1991, c. 29 (C.40A:9-22.1 et seq.), shall be fined not less than [~~\$100.00~~] \$500.00 nor more than [~~\$500.00~~] \$10,000.00, which penalty may be collected in a summary proceeding pursuant to "the penalty enforcement law" (N.J.S.A. 2A:58- 1 et seq.).
  
- c. The remedies provided herein are in addition to all other criminal and civil remedies provided under the law.